

# DRAFT

## Michigan Civil Service Commission Rules



Under Construction

Revision A – April 19, 2000

# Michigan Civil Service Commission Rules

Under Construction 

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# Chapter 1:

## BASIC RULES

### 1-1 RULES AND MODIFICATIONS, AMENDMENTS, AND SUPPLEMENTS

#### 1-1.1 CIRCULATION OF PROPOSED AMENDMENTS FOR COMMENT

The state personnel director shall give written notice to all appointing authorities and recognized employee organizations of any proposed ~~revision of amendments to~~ these rules at least ~~twenty-eight (28)~~ calendar days before final action by the civil service commission. If the written notice has been given at least ~~fourteen (14)~~ calendar days at the time action is to be taken, the commission may waive the ~~twenty-eight~~ 28-day notice requirement by the affirmative vote of a majority of a quorum, provided that, in all cases, the notice of the proposed ~~rule change amendment~~ shall provides an opportunity for comment and notification of the date and place of the meeting at which the proposed revision will first be considered. The commission may further modify ~~amend~~ a proposed amendment ~~revision~~ or defer final action to a subsequent meeting without further written notice.

#### 1-1.2 EFFECTIVE DATE

An amendment ~~revision to these rules~~ shall becomes effective upon approval by the civil service commission, unless the commission ~~otherwise orders~~ otherwise.

**(a) Recirculation.** If, ~~in the course of~~ during consideration, the commission substantially modifies a proposed ~~revision amendment~~ as circulated, the commission may order that the rule ~~as approved~~ shall again be recirculated as approved to appointing authorities and recognized employee organizations. ~~A P~~persons may file an objections to the rule within ~~fourteen (14)~~ calendar days after the date of publication. The rule ~~shall~~ becomes effective ~~twenty-one (21)~~ calendar days after ~~the date of~~ publication, unless the commission establishes a later effective date or unless the state personnel director authorizes a delay in the effective date, as provided in subsection (b) ~~in rule 2-13.2(b)~~.

**(b) Delay of effective date.** If the state personnel director, after review of any objections, finds in the director's sole discretion that the objections are so substantial that they merit further consideration by the commission, the director is authorized to delay the effective date of such rule until the next meeting of the commission. The revision ~~shall~~ becomes effective immediately upon the adjournment of the first commission meeting following

1 action by the state personnel director delaying the effective date unless the commission  
2 ~~otherwise orders~~ otherwise.

### 3 1-1.3 EMERGENCY RULE ACTION BY COMMISSION

4 In situations requiring immediate action or ~~when~~ a proposed ~~revision~~ amendment has been  
5 circulated for less than ~~fourteen~~ (14) calendar days, the civil service commission may waive  
6 the requirements of notice and approve ~~revisions~~ an amendment ~~to~~ of these rules upon  
7 unanimous vote of a quorum. The commission's determination that a situation requires  
8 immediate action is conclusive.

### 9 1-1.4 INTERIM RULE ACTION BY DIRECTOR AND CHAIR

10 If the state personnel director determines that the efficient and orderly administration of the  
11 classified service requires that a rule be waived or modified, the director, with the consent of  
12 the chair of the civil service commission, may temporarily waive or modify any rule. ~~Any such~~  
13 The modification or waiver shall be is effective immediately upon written authorization by the  
14 ~~state personnel director~~ and ~~shall be is~~ in effect only until the next meeting of the commission.  
15 The ~~state personnel~~ director shall place the waiver or modification on the agenda for the next  
16 meeting of the commission. If a majority of a quorum of the commission does not ~~fails to~~  
17 approve the waiver or modification before the adjournment of that meeting, the waiver or  
18 modification ~~shall~~ expires. Failure of the commission to approve the waiver or modification  
19 does shall not void actions taken in reliance on the interim rule action ~~during the time period~~  
20 while the waiver or modification was effective. Rules 1-1.1 and 1-1.3 ~~2-13.1 and rule 2-13.3~~  
21 ~~do are not apply applicable~~ to commission action related to interim rule action by the state  
22 personnel director.

### 23 ~~1-2.5~~ 1-1.5 RULE-MAKING THROUGH ADJUDICATIVE PROCEEDINGS

24 In addition to the legislative process provided in this rule, the civil service commission may  
25 also amend the rules by order in an individual adjudicative proceeding.

## 26 1-2 SEVERABILITY

### 27 ~~1-2.1~~ EFFECT ON REMAINING PARTS

28 If a court of competent jurisdiction finds that any portion of these rules or the application  
29 thereof of any rule to any person or circumstances shall be found to be is invalid by a court,  
30 such invalidity ~~shall not~~ does not affect the remaining ~~portions~~ rules or applications of the  
31 rules that can be given lawful effect, ~~without the invalid portion or application, provided such~~  
32 ~~remaining portions are not determined by the court to be inoperable, and to this end~~ These  
33 ~~such~~ rules are declared to be severable.

## ~~1-3~~ REGULATIONS~~IMPLEMENTATION OF RULES~~

The state personnel director ~~shall~~ is authorized to issue such additional regulations as that the director deems to be necessary or useful, to implement these rules to implement the provisions contained in the chapters of the civil service rules. A regulation issued by the state personnel director shall be binding on the department of civil service unless the commission finds that the regulation violates a rule. The state personnel director shall make all regulations available to employees through their personnel offices and the internet.

## ~~1-4~~ DELEGATION BY STATE PERSONNEL DIRECTOR

### ~~1-4.1~~DELEGATION BY STATE PERSONNEL DIRECTOR

The state personnel director may delegate, in whole or in part, any power or authority granted by the constitution or the civil service commission, unless expressly prohibited by the constitution or rule.

## ~~1-5~~ COMPLIANCE

The department of civil service shall periodically audit an appointing authority to ensure that the appointing authority is complying with civil service rules and regulations governing personnel transactions. If the state personnel director determines that an appointing authority has not complied with the rules and regulations, the state personnel director is authorized to direct the appointing authority to take necessary corrective action. If the appointing authority fails to take corrective action, the state personnel director is authorized to proceed with the recommended corrective action.

## ~~1-3~~DEFINITIONS AND PURPOSE

### ~~1-3.1~~DEFINITIONS

~~As used in these rules:~~

**NOTE 1:** The definitions in this section have been relocated to Chapter 8.

### ~~1-3.2~~BASIS AND PURPOSE

~~The basic rules are specifically mandated by the constitution and, together with rules dealing with selection and classification, are considered to be the essentials of the merit system.~~

## 1-6 MERIT, EFFICIENCY, AND FITNESS

### ~~1-6.1~~ REQUIREMENT

All appointments and promotions to positions in the classified service, and all measures for the control and regulation of employment in such positions, and separation therefrom, shall be based on merit, efficiency, and fitness.

## 1-7 NO DISCRIMINATION

### 1-7.1 CONDITIONS

No person shall be discriminated against in seeking employment, in being appointed or promoted, or in any condition of employment in the classified service, or any separation therefrom, because of race, color, religion, national origin, ancestry, disability, partisan considerations, age, or sex. Age or sex may be determined to be a bona fide occupational qualification.

### 1-7.2 SEXUAL HARASSMENT

Sexual harassment is a form of discrimination that is expressly prohibited. No classified employee shall engage in or be subject to sexual harassment during the course of employment in the classified service.

## 1-8 EQUAL OPPORTUNITY

### ~~1-8.1~~ ALTERNATE EVALUATION METHODS

In order to ensure equal employment opportunity based exclusively upon merit, efficiency, and fitness, the state personnel director may recommend to the commission, as an alternative to current means of evaluating applicants, methods for selection of persons qualified for classified employment or for promotional opportunity, which are designed to eliminate any discrimination based upon sex, age, disability, race, national origin, religion, or political partisanship, and which eliminate all irrelevant factors for evaluation of applicants.

## ~~1-7~~ 1-9 EXCEPTED AND EXEMPT POSITIONS

### ~~1-7.1~~ 1-9.1 EXCEPTED POSITIONS DESIGNATED

Positions excepted from the state classified service are those specified in article 11, section 5, of the constitution.



## ~~1-8~~ EXEMPT POSITIONS

### ~~1-8.1~~ 1-9.2 EXEMPT POSITIONS LIMITATION

(a) **Limitations.** The head of each principal department may request that civil service exempt up to five positions from the classified service, as provided for in article 11, section 5, of the constitution. Four of the five positions ~~shall~~ must be policy-making positions.

(b) **Method of Establishing.** The state personnel director is authorized to exempt up to five positions within each principal department upon request. The director shall report to the civil service commission each exemption granted and shall maintain a record of all exempt positions.

### 1-9.3 APPOINTMENT TO EXCEPTED OR EXEMPT POSITIONS

(a) **Leave of Absence to Accept Appointment.** With the prior approval of the appointing authority, a classified employee may ~~be granted~~ receive a leave of absence without pay from the employee's current classified position ~~currently occupied by that employee for the purpose of~~ to accepting an appointment to an excepted or exempted position.

(b) **Return to the Classified Service.** At the conclusion of a leave of absence to accept an appointment of the occupancy of to an excepted or exempted position, the appointing authority shall return the employee ~~shall be returned~~ to the classified position formerly occupied or an equivalent position. ~~Should such~~ If the position have been ~~was~~ abolished during the leave of absence, the appointing authority shall return the employee ~~shall be returned~~ in accordance with the civil service rules and regulations governing employment preference in effect when the former classified employee seeks to return to the classified service.

(c) **State Service Credit.** An employee returning from a leave of absence granted to for the purpose of accepting appointment to an excepted or exempted position is ~~shall be~~ allowed state service credit for all purposes for the period of the leave. Credit is ~~shall be~~ allowed as service in the classification from which the employee was granted the leave of absence.

## 1-10 TEMPORARY AGENCIES

### 1-10.1 APPLICATION OF CIVIL SERVICE RULES TO TEMPORARY AGENCIES

~~During the existence of a temporary agency, a~~ All civil service rules and regulations ~~shall~~ apply to all personnel actions of ~~the a~~ temporary agency, except as modified by this ~~section~~ rule or ~~by regulations issued under pursuant to this section~~ rule.

## 1-10.2 LIMITED RIGHT TO RETURN UPON DISSOLUTION OF TEMPORARY AGENCY

Each home agency shall grant a limited and defined right to return to the home agency to its employees who become moved employees. A moved employee's right to return to a home agency ~~shall be~~ is effective only upon (1) the dissolution of the temporary agency and (2) the abolition ~~within the state classified service~~ of the classified position occupied by the moved employee. The right to return authorized by this ~~section rule~~ shall does not be construed to entitle guarantee that a moved employee ~~shall be entitled to~~ a classified position within a home agency upon the dissolution of a temporary agency.

## 1-10.3 APPROVAL OF PROCEDURES

Each home agency shall issue procedures to implement the right to return for moved employees, subject to review and final approval by the state personnel director.

## 1-11 CITIZENSHIP AND WORK AUTHORIZATION

### ~~1-11.1 REQUIREMENT~~

An applicant or ~~an employee~~ shall must be a citizen of the United States or an alien authorized to work in the United States. The state personnel director may designate positions for which United States citizenship is required.

## 1-12 POLITICAL ACTIVITIES

### 1-12.1 CANDIDATES FOR PUBLIC OFFICE.

**(a) Local office.** ~~An classified employee in the classified service~~ may become a candidate for nomination and election to ~~any~~ local elective office, partisan or nonpartisan, without first obtaining a leave of absence.

**(b) State office.** ~~An classified employee in the classified service~~ may become a candidate for nomination and election to state office if the employee but shall requests and shall receive a leave of absence without pay. The request must be made at the time of compliance with the candidacy filing requirements or ~~sixty (60) calendar days before~~ prior to the election in question, whichever ~~date~~ is closer to the election. An appointing authority shall grant a request for a leave of absence to become a candidate for state office.

### ~~1-11.2 STATE OFFICE DEFINED~~

**NOTE 2:** The definition of "state office" has been relocated to Chapter 8.

## 1-12.2 LEAVE OF ABSENCE FOR PRIMARY ELECTION

- (a) **Employee not nominated.** An employee on required leave of absence for a primary election ~~who is but~~ not nominated in that election shall return from leave of absence immediately after the official canvass of votes.
- (b) **Employee nominated.** An employee nominated in a primary election shall remain on leave of absence until the special or general election.
- (c) **Employee nominated but withdraws.** An employee nominated in a primary election who withdraws from the general or special election in accordance with applicable election law shall return from leave of absence immediately upon such withdrawal.

## 1-12.3 LEAVE OF ABSENCE FOR GENERAL OR SPECIAL ELECTION.

- (a) **Employee not elected.** An employee on required leave of absence for a general or special election but not elected in that election shall return from leave of absence immediately after the official canvass of votes.
- (b) **Employee elected.** An employee on required leave elected in a general or special election shall leave state classified employment by resignation, retirement, or appropriate separation immediately upon assumption of the office.

## 1-12.4 POLITICAL PARTY ACTIVITIES

An employee in the classified service may:

- (a) Become a member or an officer of a political party committee formed or permitted under the election laws of Michigan or ~~of~~ the United States.
- (b) Be a delegate to any convention held by a political party.
- (c) Engage in political activities on behalf of a candidate or issue ~~in connection with a~~ partisan or nonpartisan election.

## 1-12.5 POLITICAL ASSESSMENTS

The levying, solicitation, collection, or payment of any type of political assessment, and the authorizing or ordering of such activity in the classified service, are ~~expressly~~ prohibited.

## 1-12.6 PROHIBITED DURING ACTUAL-DUTY TIME

A classified employee shall not engage in any activity permitted under rules ~~1-5.1 and 1-5.5-1-~~ 12.1 or 1-12.4 during actual-duty time.

## 1-12.7 CONFLICT OF INTEREST

- (a) **No conflict permitted.** Political activity, including election to or the holding of public office by a state classified employee, ~~shall~~must not conflict with the satisfactory and impartial performance of duties required in the employee's classified position, ~~held by the employee.~~
- (b) **Compensated employee.** An employee compensated for serving in a staff, advisory, or advocacy capacity in any partisan or nonpartisan election ~~and compensated for that service~~ is subject to the requirements of these rules regarding outside employment.

## 1-12.8 NOTICE

An employee seeking or holding public office ~~which that~~ may be in conflict of interest as specified in rule ~~1-5.8~~ 1-12.7 shall inform the appointing authority when becoming a candidate or, if appointed, when assuming the office, ~~is assumed.~~ A request for leave of absence required by rule ~~1-5.1(b)~~ 1-12.1(b) to seek state office ~~shall~~ constitutes notice to the employer.

## 1-12.9 FEDERAL LAW

Political activities, including candidacy for public office permitted by this rule, may be prohibited by preemptive federal law.

# 1-13 PATENTS —AND INVENTIONS

## 1-13.1 EMPLOYEE RIGHTS

The property rights of ~~a classified employee~~ in a patent on an invention ~~that the~~ created by a classified employee ~~created shall be~~ are subject to contract entered into by the state administrative board as provided by law. ~~In recognition of meritorious service, t~~ The employee's compensation ~~shall be~~ is ~~fifteen (15)~~ percent of the net royalties ~~which that~~ may result from the invention. The compensation provisions of this rule ~~section~~ are not ~~non-~~ negotiable. ~~h~~ However, any dispute concerning the employee's property rights relative to the state's property rights in such an invention is grievable.

## 1-13.2 GRANTS AND CONTRACTS

This rule ~~section shall~~ does not preclude the acceptance of grants or contracts under provisions of applicable federal laws or regulations that require a different disposition of patents or rights ~~thereof~~ to obtain patents.

## 1-14 COPYRIGHTS

### 1-14.1 EMPLOYEE RIGHTS

The property rights of a classified employee in a copyright that subsists in a work created by the a classified employee as an author-employee shall belong to the state and be are subject to contract entered into by the state administrative board as provided by law. In recognition of meritorious service, the author-employee's compensation shall be is fifteen (15) percent of the net royalties from written licenses or transfers to third parties by the state of Michigan that may result from a work, but only when re- the state or agency has obtained a certificate of copyright, has been obtained by the state or agency. The compensation provisions of this rule are not negotiable. However, Any dispute concerning the author-employee's property rights relative to the state's property rights in such a copyright is grievable. The percent of royalties as compensation shall not be negotiable in union contracts.

### 1-14.2 GRANTS AND CONTRACTS

This rule shall does not preclude the acceptance of grants or contracts under provisions of applicable federal laws or regulations that require a different disposition of the copyright in works.

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*[End of Chapter 1]*



# Chapter 2:

## ~~GENERAL~~

## ~~RULES~~ EMPLOYMENT

## PROVISIONS

### ~~2-1 BASIS AND PURPOSE~~

#### ~~2-1.1 BASIS AND PURPOSE~~

~~Rules in the general chapter (1) are logically derived from constitutional mandates, (2) are housekeeping and mechanical in nature, or (3) are of internal concern to the department of civil service only.~~

### ~~2-2 [RESERVED]~~

## 2-1 TERMS OF EMPLOYMENT

### 2-1.1 PURPOSE

~~This section defines employment types for benefit purposes. The state personnel director shall issue regulations defining appointment types.~~

#### 2-1.1 CAREER APPOINTMENT ~~EMPLOYMENT~~

~~Employment~~ An indefinite appointment expected to last seven hundred twenty (720) hours the equivalent of 90 full-time workdays or more in a calendar year is shall be considered career employment. A limited-term appointment expected to last of seven hundred twenty (720) hours the equivalent of 90 full-time workdays or more in a calendar year shall be- is considered as career employment for all benefit purposes except as otherwise provided in these the rules or in regulations. of the department of civil service.

## 2-1.2 NONCAREER APPOINTMENT EMPLOYMENT

~~An appointment Employment~~ expected to last less than ~~seven hundred twenty (720) hours~~ the equivalent of 90 full-time workdays in a calendar year ~~is shall be considered a noncareer appointment employment.~~ An Noncareer employees are in a noncareer appointment is not entitled to any of the following:

(a) Sick or annual leave accruals.

(b) Holiday pay.

(c) Enrollment in state-sponsored group health or insurance plans.

(d) Service credit for any purposes, such as longevity compensation, salary step increase, employment preference, or status.

~~(e) Noncareer employment in excess of seven hundred nineteen (719) hours~~ exceeding the equivalent of 89 workdays in any calendar year.

## 2-1.3 STUDENT AND SPECIAL CLASSIFICATIONS

The state personnel director may issue regulations to permit noncareer employment ~~in excess of seven hundred nineteen (719) hours~~ exceeding the equivalent of 89 full-time workdays in a calendar year, without fringe benefits, for designated student and special classifications.

# 2-2 SERVICE RATINGS

## 2-2.1 RATING SYSTEM

The state personnel director shall issue regulations to establish a system of service ratings to report the quality of service rendered by each employee in the classified service.

## 2-2.2 SUBMISSION ~~WHEN SUBMITTED~~

**(a) Probationary ratings.** An appointing authority shall evaluate and rate the performance of each probationary employee during and at the end of the probationary period. The appointing authority shall certify each probationary service rating to the department of civil service as in the manner directed by the department.

**(1) Full-time employees.** At a minimum, an appointing authority shall rate issue a service rating a full-time probationary employee after upon completion of 1,040 6 months hours, and again upon after completion of 2,080 hours one year of employment. In addition, if the probationary employee is a new hire without status in the classified service, the appointing authority shall rate the employee after completion of 3 months of employment.



**(2) Less than full-time employees.** At a minimum, an appointing authority shall rate a probationary employee working less than full-time after completion of 9 months and again after completion of 18 months of employment. In addition, if the probationary employee is a new hire without status in the classified service, the appointing authority shall rate the employee after completion of 3 months of employment.

**(3) Extension of probation.** If a probationary period is extended beyond 2,080 hoursone year (for full-time employees) or 18 months (for less than full-time employees), the appointing authority shall also issue a service rating at the end of the extension of the probationary period. In addition, if the probationary employee is a new hire without status in the classified service, the appointing authority shall also issue a service rating upon completion of 520 hoursthree months of service.

**(b) Annual ratings.** An appointing authority shall rate the performance of each nonprobationary employee at least annually. The appointing authority may use any appropriate rating method, including performance management plan ratings, unless the regulations require ~~the use of a particular rating method.~~ The appointing authority shall certify each annual ratings to the department of civil service ~~in the manner as~~ directed by the department.

**(c) Interim ratings.** An appointing authority may issue an interim service rating for an employee at any time.

**(d) Follow-up ratings.** If an employee's performance rating is less than satisfactory but the employee is not dismissed, the appointing authority shall establish in writing the length of a follow-up rating period. The appointing authority shall issue a follow-up service rating before or within 14 calendar days after the end of the follow-up rating period. If the appointing authority fails to issue a follow-up service rating within the time allowed, the employee may, within 14 calendar days after the end of the period allowed for issuance of the follow-up rating, request in writing that the appointing authority issue the follow-up service rating. If the authority fails to issue the follow-up service rating within 14 calendar days after ~~the date of~~ the employee's written request, the employee is shall ~~automatically be~~ returned to satisfactory standing, effective ~~at the end of the follow-up~~ rating period. However, the ~~automatic~~ return to satisfactory standing ~~shall does not~~ nullify any prior unsatisfactory performance rating or preclude the later use of any such rating.

### 2-2.3 UNSATISFACTORY SERVICE RATING

If an employee receives a service rating that is less than satisfactory, the appointing authority may discipline the employee, up to and including dismissal. If an employee's last two service ratings ~~have been~~ are less than satisfactory and the appointing authority has taken no adverse action, the state personnel director may recommend to the civil service commission that the employee be removed from the position. An employee who receives a service rating that is

less than satisfactory is not eligible to receive a performance-pay award or a higher salary step.

## 2-2.4 EMPLOYEE REVIEW

Agency management shall report each employee's service rating to the employee. If the employee ~~is given~~ receives a service rating that is less than satisfactory, agency management shall review the employee's service rating with the employee. The employee shall ~~be required to sign and date the service rating as evidence of such the review.~~ The employee's signature on a service rating ~~does shall not be interpreted to indicate that the employee agrees with approves~~ the service rating. The employee may file an explanatory statement to accompany the service rating.

## 2-2.5 PERFORMANCE-PAY PROGRAM EVALUATION SYSTEM.

**(a) Performance measures.** An appointing authority shall establish performance objectives or competencies against which to measure the performance of each employee in the following:

(1) The senior executive service (SES).

(2) The senior executive management assistant service (SEMAS).

(3) Equitable classification plan (ECP) Group 4.

(4) ECP Groups 1, 2, or 3, when the state personnel director has approved the employee's inclusion in the performance-pay program.

**(b) Annual review.** An appointing authority shall complete a performance appraisal and a salary review for each employee in the performance-pay program at least annually.

**(c) Use of appraisal.** An appointing authority shall use the performance appraisal as one factor in determining an employee's eligibility for an increase in base salary or a lump sum award. A performance appraisal may also be used in other human resource decisions, including promotion, retention, assignment, and need for training.

## 2-3 LAYOFFS

### 2-3.1 REASONS FOR LAYOFF

An employee may be laid off for reasons of administrative efficiency, including, for example, lack of work, lack of adequate funding, change in departmental mission, or reorganization of the work force.

## 2-3.2 NOTIFICATION

~~In every case of lay off, the~~ An appointing authority shall give prior written notice ~~on the prescribed form to the~~ an employee who is laid off.

## 2-3.3 PROCEDURE FOR MAKING LAYOFFS

~~An appointing authority Layoffs shall lay off employees be made in accordance with the civil service rules and regulations governing employment preference.~~ rules.

# 2-4 EMPLOYMENT PREFERENCE

## ~~2-6.1~~ DEFINITIONS

~~As used in these rules:~~

**NOTE 3:** The definitions in this rule have been relocated to Chapter 8.

## 2-4.1 APPLICATION AND PROTECTION

**(a) Application.** Unless otherwise provided in an approved departmental layoff plan, ~~An~~ employee ~~shall can~~ apply employment preference only within the employee's current principal department or autonomous entity. ~~established pursuant to law, unless otherwise permitted in an approved departmental layoff plan.~~ However, an employee ~~may cannot~~ apply preference against a position or classification that is protected from the application of employment preference.

**(b) ~~Limited-Term Appointments;~~ Employment Preference** ~~No employment preference or recall.~~ An employee ~~shall is~~ not be eligible to exercise employment preference or to be placed on a recall list at the end of a limited-term appointment, unless the employee meets one of the following criteria:-

### **(b) ~~Exceptions.~~**

- (1)** An employee with status gained from an indefinite appointment to a permanent position who transfers or accepts a limited-term appointment may exercise employment preference at the end of the limited-term appointment. Employment preference ~~shall begins~~ at the last classification level at which the employee achieved status in an indefinite appointment before accepting the limited-term appointment. Employment preference may be exercised only within the principal department or autonomous agency that appointed the employee to the limited-term appointment.

~~(B)(2)~~ A person who is recalled on a limited-term basis ~~shall is not be~~ eligible to exercise employment preference at the end of the limited-term appointment, but shall be returned to all recall lists for which the employee is eligible.

**(c) Protected positions.** An incumbent occupying a protected position cannot be displaced from the incumbent's current position by another employee exercising employment preference. An incumbent in protected position does not lose the right to apply employment preference to an unprotected position if the incumbent's protected position is abolished. The following positions are protected positions from the application of employment preference:

**(1)** All positions in senior executive service (SES) ~~classes~~ classifications, including positions ~~that are in SES-eligible classes~~ as defined in the rule 4-7.

**(2)** All positions ECP in Group 4 classes ~~of the Equitable Classification Plan.~~

**(3)** All positions in senior executive management assistant service (SEMAS) ~~classes~~ as defined in rule 2-26.1.

**(4)** Any other position designated as protected in any other civil service rule or regulation.

~~**Nature of protection.** Protection from the application of employment preference means that an incumbent occupying a protected position may not be displaced from the incumbent's current position by another employee exercising employment preference.~~

~~**Application to unprotected position.** An incumbent in a protected position does not lose the right to apply employment preference to an unprotected position in the event that the incumbent's protected position is abolished.~~

## 2-4.2 DETERMINATION

Employment preference ~~shall be is~~ determined by ~~the an~~ employee's total continuous service.

**(a) Ranking employees with identical service.** If two or more employees have equal total continuous service, the appointing authority shall rank each employee by evaluating ~~such~~ such factors such as fitness for the position, education, experience, behavior, and performance. An employee receiving a higher ranking ~~shall be is~~ considered to have greater employment preference. An employee ~~may cannot~~ appeal a ranking to the department of civil service or the civil service commission unless the ranking violates ~~rule 1-7.1-2.~~

**(b) Loss of employment preference.** An employee who separates from the state classified service by methods other than a leave of absence, suspension, or layoff, ~~shall loses~~ any total continuous service accumulated ~~prior to before~~ that separation.

**(c) Effect of status.** An employee ~~having with~~ status from current employment, regardless of the classification level at which status was obtained, ~~shall have~~ has greater employment preference than an employee ~~who does not have~~ without status.

**(d) Affirmative action exemption.** In order to preserve affirmative action gains made in a program approved by the Michigan ~~department of~~ civil rights commission and the department of civil service, the state personnel director may exempt an appointing authority from using a strict application of total continuous service, in accordance with regulations issued by the director.

### 2-4.3 QUALIFICATION

An employee may apply preference against a least senior position if all of the following eligibility criteria are met:

**(a) Position and eligibility.** An employee ~~is eligible to~~ may apply preference (1) to a least senior position in a classification or class series in which the employee is serving or (2) to a least senior position in a classification or class series at ~~and~~ or below the classification level in which the employee has previously served and satisfactorily completed at least 2,080 hours 12 months of full-time employment or 18 months of less than full-time employment, of satisfactory service.

**(b) Subclasses.** If ~~one or more~~ subclass codes have been assigned to the least-senior position, the employee ~~is eligible to~~ may apply preference only if the employee has been assigned one or more of the same subclass codes in the same classification or class series at or above the classification level of the least senior position.

**(c) Selective ~~certification~~ position requirements.** If selective ~~certification~~ position requirements have been established for the least senior position, the employee is eligible to apply preference only if the employee meets the selective ~~certification~~ position requirements.

### 2-4.4 EMPLOYEE RIGHTS TO APPLY PREFERENCE.

**(a) Application of preference.** An employee ~~shall~~ may apply preference only against another position within the employee's county of employment, unless otherwise permitted in an approved departmental layoff plan. An employee ~~shall~~ can apply preference to the least senior position for which eligible in the following order:

**(1)** The least senior position in the employee's current classification, ~~and level.~~

**(2)** The least senior position at a lower classification level in the current class series or, alternatively, to the same or lower classification in a former class series at and below the level at for which the employee has satisfactorily completed 2,080 hours 12 months of full-time employment or 18 months of less than full-time employment, of satisfactory service, at the level that will whichever minimizes loss of pay.

~~(b) **Automatic series.** All classifications in a class series that permit automatic level changes shall be considered the same classification and level for employment preference purposes.~~

**(b) Departmental layoff plans.** The department of civil service may approve a departmental layoff plan that varies the application of employment preference within a department or autonomous agency. An approved departmental layoff plan may vary the application of employment preference in the following areas only:

**(1)** The application of county preference based on organizational or geographic limits.

**(2)** The application of employment preference between recognized autonomous entities of a principal department.

**(3)** The application of employment preference into additional positions in class clusters approved by the appointing authority and the department of civil service.

**(4)** The application of employment preference between employment types.

~~2-6-62-4.5~~ PREFERENCE APPLICATION OF EMPLOYMENT PREFERENCE  
BETWEEN EMPLOYEES WITH A COVERED BY A COLLECTIVE  
BARGAINING AGREEMENT AND THOSE WITHOUT NOT COVERED  
BY A COLLECTIVE BARGAINING AGREEMENT

Application of employment preference between employees covered by ~~with~~ a collective bargaining agreement and employees ~~without~~ not covered by a collective bargaining agreement ~~shall be~~ is subject to the following additional conditions:

**(a) Qualification.** An employee may only displace a less senior employee in a position for which qualified in a classification in which the employee has satisfactorily completed 1,040 hours 12 months of full-time employment or 18 months of less than full-time employment. ~~of satisfactory service.~~

**(b) Application; exhaustion.** An employee not covered by ~~without~~ a collective bargaining agreement ~~shall must~~ first exhaust all bumping rights to other positions held by employees not covered by ~~without~~ a collective bargaining agreement. After If the employee ~~exhausting~~ all such rights, the employee not covered by ~~without~~ a collective bargaining agreement may then bump into the position covered by a collective bargaining agreement that minimizes loss of pay, subject to the terms and conditions of the collective bargaining agreement. If a collective bargaining agreement expressly provides for exclusively represented employees covered by the agreement to bump into positions not covered by an agreement, they may do so only after exhausting all bumping rights under the agreement, and then in accordance with this rule 2-19.6. ~~When~~ re more than one employee covered by a collective bargaining agreement is eligible to bump into a position not covered by a collective bargaining agreement, the most senior employee ~~shall be granted~~ such receives bumping rights.

1 **(c) Total continuous service.** Employment preference ~~shall be~~ is determined by ~~the~~ an  
2 employee's total continuous service.

3 **(d) Limitation on seniority.** A collective bargaining agreement ~~shall cannot~~ prohibit an  
4 employee who accepts a supervisory position or any other employee who is not covered  
5 by a collective bargaining agreement from exercising employment preference into a  
6 position covered by the ~~collective bargaining agreement~~. In such bumping situations,  
7 seniority earned outside the unit ~~shall apply~~ ies, except as limited by any collective  
8 bargaining agreement provisions in effect ~~as of on~~ January 23, 1983. ~~This e provisions of~~  
9 ~~this subsection will only apply~~ sy after the employee exhausts rights to displace other  
10 employees not covered by a collective bargaining agreement.

11 **(e) Grievances.** A grievance ~~that is based upon~~ the application and adverse effects of this  
12 ~~rule section shall be~~ is filed, processed, and resolved ~~pursuant to~~ under the grievance proce-  
13 dure provisions that are applicable to the position into which the exercise of employment  
14 preference has occurred or is scheduled to occur. This rule ~~shall does~~ not preclude ~~the~~  
15 ~~right of a nonexclusively represented employee to from~~ fileing a standard grievance, even  
16 after bumping into an exclusively represented position, if the employee contends a denial  
17 ~~of he or she was denied~~ the right to displace another nonexclusively represented employee.

## 18 2-4.6 EFFECTIVE DATE

19 The employment preference rights of an employee ~~who is laid off or displaced prior before to~~  
20 the effective date of any amendment to theis rules or regulations ~~are shall be~~ determined by the  
21 civil service rules and regulations in effect at the time of layoff or displacement.

## 22 2-5 DISMISSAL, DEMOTION, OR SUSPENSION

### 23 2-5.1 DISCIPLINARY CONFERENCE

24 ~~Whenever it is an appointing authority considered it necessary to dismiss, demote, or suspend~~  
25 ~~an employee, the appointing authority shall provide written notice of any claimed violations~~  
26 ~~and possible penalties. The appointing authority shall schedule a disciplinary conference shall~~  
27 ~~be scheduled, subject to the employee's availability, and the employee shall be notified in~~  
28 ~~writing of the claimed violation and disciplinary penalty or possible penalty. Nothing shall~~  
29 ~~prevent t~~ The appointing authority may from withholding a penalty determination until after  
30 the disciplinary conference. If The failure of the employee fails to attend the disciplinary  
31 conference, the employee has waived the employee's the right to such the conference.

### 32 2-5.2 REPRESENTATION

33 The employee for whom the disciplinary conference is ~~being held shall be~~ is entitled to  
34 representation of the employee's choice, except as otherwise limited by the civil service rules  
35 or regulations. A fellow employee representative ~~who is of employed by~~ the same principal

department and the same subagency ~~shall be~~ is entitled to administrative leave to attend the disciplinary conference. It is the responsibility of the employee to notify the employee's representative of the conference. The conference ~~shall will~~ not be unreasonably delayed ~~due to~~ because of the representative's unavailability.

### 2-5.3 CAUSES

An employee in the classified service may be dismissed, demoted, or suspended for any of the following reasons:

**(a)** Failure to carry out the duties and obligations imposed by these rules and by agency management.

**(b)** Conduct unbecoming a state employee.

**(c)** Unsatisfactory service.

### 2-5.4 SUSPENSION ~~FOR~~ DURING INVESTIGATION

An appointing authority may suspend an employee during for an investigation. The suspension ~~shall must~~ be superseded by a disciplinary suspension, dismissal, or reinstatement within ~~seven (7)~~ calendar days unless extended by the appointing authority. The appointing authority shall give the employee written notice of the extension and the reasons for the extension. ~~shall be provided in writing to the employee, stating the reasons therefore.~~ Any extension shall be with pay.

### 2-5.5 SUSPENSION FOR CRIMINAL CHARGES

An appointing authority may suspend an employee who has been charged with a criminal offense. The suspension may be with or without pay. The appointing authority may continue the suspension until the criminal charges are resolved. The appointing authority is not required to hold a presuspension disciplinary conference, but shall give the employee written notice of the suspension.

## 2-6 DRUG AND ALCOHOL TESTING

### ~~2-9.1~~ DEFINITIONS

~~As used in these rules:~~

**NOTE 4:** The definitions in this rule have been relocated to Chapter 8.



## 2-6.1 PROHIBITED ACTIVITIES

A classified employee shall not do any of the following:

**(a)** Consume alcohol or use drugs while on duty.

**(b)** Report to duty or be on duty with a prohibited level of alcohol or drugs present in the employee's bodily fluids.

**(c)** Refuse to submit to a required drug test or alcohol test.

**(d)** Interfere with any testing procedure or tamper with any test sample.

## 2-6.2 TESTING CLASSIFIED EMPLOYEES

An appointing authority shall require an employee, as a condition of continued employment, to submit to a drug test or an alcohol test, as provided in this rule.

**(a) Tests Authorized.** The following tests are authorized:

**(1) Reasonable suspicion testing.** An employee shall ~~be required to~~ submit to a drug test or an alcohol test if there is reasonable suspicion that the employee has violated this rule.

**(2) Preappointment testing.** An employee not occupying a test-designated position shall submit to a drug test if the employee is selected for a test-designated position.

**(3) Follow-up testing.** An employee shall submit to an unscheduled follow-up drug test or alcohol test if, within the previous 24-months ~~period~~, the employee has done any of the following:

**(A)** ~~v~~Voluntarily disclosed drug or alcohol problems;

**(B)** ~~e~~Entered into or completed a rehabilitation program for drug or alcohol abuse;

**(C)** ~~f~~Failed or refused a preappointment drug test; ~~or~~

**(D)** ~~was~~Been disciplined for violating this rule.

**(4) Random selection testing.** A test-designated employee shall submit to a drug test and an alcohol test if the employee ~~has been~~is selected for testing on a random selection basis.

**(5) Post-accident testing.** A test-designated employee shall submit to a drug test or an alcohol test if there is evidence that the test-designated employee may have caused or contributed to a serious work accident.

(b) **Limitations on certain tests.** An employee subject to testing under this rule may be required to submit only to a drug test, only to an alcohol test, or to both tests, subject to the following limitations.

(1) **Preappointment testing.** ~~Test selection.~~ However, ~~p~~ Preappointment testing shall be limited to drug testing.

(2) **Limitations on follow-up testing.** The appointing authority may require an employee who is subject to follow-up testing to submit to no more than six unscheduled drug tests or alcohol tests within any ~~twelve~~ 12-month period.

(3) **Limitations on random selection testing.** The number of drug tests conducted in any one year on a random selection basis ~~shall cannot exceed fifteen~~ 15 percent ~~(15%)~~ of the number of all test-designated positions. The number of alcohol tests conducted in any one year on a random selection basis ~~shall cannot exceed fifteen~~ 15 percent ~~(15%)~~ of the number of all test-designated positions.

#### 2-6.3 TESTING NEW HIRES; CONDITIONAL OFFER OF EMPLOYMENT

Any offer of employment to a person who is not currently employed in the classified service ~~shall be~~ is a conditional offer of employment. The offer of employment ~~shall be~~ is conditioned upon the person submitting to and passing a preemployment drug test. A person given a conditional offer of employment ~~shall not~~ is prohibited from performing any duties until the person has submitted to and passed the preemployment drug test.

#### 2-6.4 PENALTIES

(a) **Classified employees.** An appointing authority shall impose discipline, up to and including dismissal, for violation of this rule. An appointing authority shall prescribe in its work rules the range of penalties, including any mandatory penalties, for violating this rule. An employee selected for a test-designated position ~~shall not~~ is prohibited from serving in the test-designated position until the employee has submitted to and passed a preappointment drug test. If the employee fails or refuses to submit to the drug test, interferes with a test procedure, or tampers with a test sample, the following occurs:

(1) The employee shall cannot be appointed, promoted, reassigned, recalled, transferred, or otherwise placed in the test-designated position.

(2) The employee ~~shall also be~~ is removed from all ~~employment lists~~ applicant pools for test-designated positions and ~~shall be~~ is disqualified from any test-designated position for a period of ~~three~~ 3 years.

(3) ~~In addition, if~~ the employee interferes with a test procedure or tampers with a test sample, the employee may also be disciplined as provided in subsection (1).

(b) **New Hires.** If a person given a conditional offer of employment fails or refuses to submit to the preemployment drug test, interferes with a test procedure, or tampers with a test

sample, the conditional offer of employment ~~shall~~ must be rescinded and the person ~~shall~~ must not be appointed to a the position in the classified service. The person ~~shall~~ also is ~~be~~ removed from all ~~employment lists~~ applicant pools and ~~shall be~~ is disqualified from appointment to the classified service for a period of ~~three~~ 3 years.

## 2-6.5 SELF-REPORTING

**(a) Reporting.** An employee who voluntarily discloses to the appointing authority a problem with controlled substances or alcohol ~~shall~~ cannot be disciplined for such disclosure if, and only if, the problem is disclosed before the occurrence of any of the following:

**(1)** For reasonable suspicion testing, before the occurrence of an event that gives rise to reasonable suspicion that the employee has violated this rule.

**(2)** For preappointment testing, follow-up testing, and random selection testing, before the employee is selected to submit to a drug ~~test~~ or alcohol test.

**(3)** For post-accident testing, before the occurrence of any accident that results in post-accident testing.

**(b) Employer action.** After receiving notice, the appointing authority shall permit the employee an immediate leave of absence to obtain medical treatment or to participate in a rehabilitation program. In addition, the appointing authority shall remove the employee from the duties of a test-designated position until the employee submits to and passes a follow-up drug test or alcohol test. The appointing authority may require the employee to submit to further follow-up testing as a condition of continuing or returning to work.

**(c) Limitation.** An employee may take advantage of subsection (a) ~~the provisions of rule 1-7.6(a)~~ no more often than two times while employed in the classified service. An employee making a report is not excused from any subsequent drug test or alcohol test or from otherwise complying in full with this rule ~~1-7~~. An employee making a report remains subject to all drug and alcohol testing requirements after making a report and may be disciplined as the result of any subsequent drug test or alcohol test, including a follow-up test.

## 2-6.6 IDENTIFICATION OF TEST-DESIGNATED POSITIONS

Each appointing authority shall first nominate classes of positions, subclasses of positions, or individual positions to be test-designated. The state employer shall review the nominations and shall recommend to the state personnel director the positions to be test-designated positions. The director or the director's designee shall review the recommendations and shall designate as test-designated positions all the classifications ~~es~~, subclasses, or individual positions that meet the definition of a test-designated position ~~one or more of the requirements of rule 1-7.1(h)~~. The designation ~~by the director or the director's designee~~ shall ~~is~~ not be limited by or to the nominations or recommendations. The appointing authority

shall give written notice of designation to each test-designated employee at least ~~fourteen~~ (14) days before implementing the testing provisions of this rule.

## 2-6.7 CONTINUATION OF EXISTING PROGRAMS

Until the state personnel director issues regulations to the contrary, nothing in this rule ~~shall~~ prohibits an appointing authority from continuing to use an existing drug or alcohol testing program. Nothing in this rule or ~~in the regulations shall~~ prohibits an appointing authority from implementing a drug or alcohol testing program required by ~~F~~federal law or approved by the commission in a collective bargaining agreement.

## 2-6.8 COORDINATION OF RULE AND FEDERAL REGULATIONS

~~The provisions of t~~This rule ~~are also applicable to an~~ employees subject to mandatory ~~F~~federal regulations governing drug or alcohol testing. However, the employee is subject only to the provision of the federal regulation in any circumstance in which (1) it is not possible to comply with both this rule and the ~~F~~federal regulation or (2) compliance with this rule is an obstacle to the accomplishment and execution of any requirement of the ~~F~~federal regulation;  
~~the employee shall be subject only to the provision of the Federal regulation.~~

## 2-6.9 REGULATIONS

~~This rule shall be effective August 1, 1998. The state personnel director shall issue regulations to implement this rule on or before August 1, 1998. The regulations shall establish the prohibited levels of drugs and alcohol in the regulations.~~

## 2-7 CONFLICT OF INTEREST

### 2-7.1 PROHIBITIONS

A classified employee shall not do any of the following:

**(a)** Divulge or release, for the purpose of fostering personal financial gain or financial gain for a member of the employee's immediate family, any confidential information which is not by law, rule, regulation or court order available to members of the general public. However, this provision ~~shall~~ does not prevent an employee from divulging or releasing confidential information regarding violations of rules, regulations, or applicable law except where otherwise prohibited by statute, court order, or professional ethics.

**(b)** Engage in any business transaction or private arrangement for personal financial gain or financial gain for a member of the employee's immediate family, ~~which that~~ accrues from or is based on the employee's official position or on confidential information gained by reason of the employee's position.

1 (c) Solicit, accept, or agree to accept anything of value under any circumstances ~~which that~~  
2 could reasonably be expected to influence the manner in which the employee performs  
3 work or makes decisions.

4 (d) Grant or make available to any person any consideration, treatment, advantage, or favor  
5 beyond that which ~~it is the generally practice to granted~~ or ~~made~~ available to others  
6 under similar circumstances.

7 (e) Represent or act as agent for any private interests, whether for compensation or  
8 otherwise, in any transaction in which the state has a direct and substantial interest and  
9 which could reasonably be expected to result in a conflict between the employee's private  
10 interests ~~of the employee and the employee's~~ official state responsibilities.

11 (f) Have any substantial interest in, nor ~~shall can~~ a member of the employee's immediate  
12 family have such interest in, any business or industry concerning which the employee  
13 directly, in a significant decision-making capacity, participates on behalf of the state in the  
14 regulation, enforcement, auditing, licensing, or purchasing of any goods or services.

## 15 2-7.2 DEPARTMENTAL PROCEDURES

16 An appointing authority may issue departmental procedures that define with particularity acts  
17 prohibited by this rule. A departmental procedure ~~shall be~~ is effective after approval by the  
18 state personnel director.

## 19 2-8 DISCLOSURE OF INTEREST AND CONTACTS

### 20 2-8.1 DISCLOSURE OF INTEREST

21 (a) Affected employees. The following employees shall disclose to their appointing  
22 authority (1) all personal or financial interests and (2) the personal and financial interests  
23 of members of their immediate families, in any business or entity with which they have  
24 direct contact while performing official duties as a classified employee:

25 (1) An ~~E~~employees who ~~has~~ have authority to purchase or award contracts.

26 (2) An ~~E~~employees whose ~~as a part of their~~ official duties include (1) developing or  
27 approveing specifications for contracts or (2) recommending the purchase or award  
28 of contracts.

29 (3) An ~~E~~employees who ~~has~~ have substantial regulatory or enforcement responsibilities.

30 (4) An ~~E~~employees who inspects or approves work performed by businesses or persons  
31 who are not state employees.

32 (5) An ~~E~~employees who audits financial records of businesses or individuals.

~~(6) An~~ Employees who supervises any of the employees listed in subsections (a)(1) through (a)(5).

**(b) Notice.** Each employee determined by the appointing authority to be subject to this rule ~~shall~~ must be given written notice of that determination. ~~No disclosure shall be~~ is not required under this rule in the absence of such notice. The appointing authority shall maintain a list of employees who have been given notice and shall make that list available to the state personnel director and ~~to~~ the public.

## 2-8.2 DISCLOSURE OF CONTACTS

An employee who is given notice as provided in this rule ~~2-22.1(b)~~ shall report in writing to the employee's appointing authority each contact between the employee and any person doing business with the state in which the employee receives anything of value.

**NOTE 5:** Definitions in subsections (a) & (b) have been relocated to Chapter 8.

**(a) Supervisors included.** An employee who supervises another classified employee governed by this rule shall report any contact between the supervisor and any individual in which the supervisor receives anything of value in the same manner as if the supervisor was the classified employee required to report ~~in by this rule, 2-22.2.~~

**(b) De minimis contacts; exception.** An appointing authority may exempt from the reporting requirements of this rule any contact resulting in the receipt of anything of value which is so *de minimis* that the appointing authority has determined that its receipt by the classified employee could not reasonably be expected to influence the manner in which the employee performs work or makes decisions. However, any such *de minimis* exemption may not exceed the following limits:

**(1)** Receipt of any single tangible or intangible item with a fair market value exceeding ~~ten dollars~~ (\$10.00).

**(2)** Receipt of any combination of tangible and intangible items during any ~~consecutive three~~ 3-month period with an aggregate fair market value exceeding ~~forty dollars~~ (\$40.00). ~~For the purposes of this subsection, a~~ All items received from persons employed by, or directly or indirectly representing, the same business, entity, or person ~~shall be~~ are aggregated and, if the aggregate value exceeds ~~forty dollars~~ (\$40.00), all contacts ~~shall~~ must be reported.

**(3)** Receipt of any amount of money, including a loan of money.

**(d) Time limit for disclosure.** An employee shall file with the appointing authority any written report required by this rule within ~~fourteen (14)~~ calendar days after the reportable contact. An appointing authority may establish different time limits in its departmental procedures.

### 2-8.3 DEPARTMENTAL PROCEDURES; APPROVAL

Each appointing authority shall issue departmental procedures to implement disclosure and reporting requirements and shall inform all employees and prospective employees of those procedures and the regulations governing conflict of interest. An appointing authority shall submit the departmental procedure to the state personnel director. Upon review to determine that the procedures are reasonable and consistent with the requirements of this rule, the state personnel director shall issue formal approval. A departmental procedure ~~shall be~~ is not be given effective until the state personnel director has approved the departmental procedure. A ~~D~~disclosure reports filed with an appointing authority ~~shall be~~ is a public records.

## 2-9 DISCLOSURE OF VIOLATIONS

### 2-9.1 REPRISAL PROHIBITED

An appointing authority shall not engage in reprisal against an employee for disclosing a violation or suspected violation of any of the following:

(a) (1) a ~~A~~ state or federal law, ~~or~~

(b) (2) a ~~A~~ lawful regulation or rule promulgated by a political subdivision of the State of Michigan, ~~pursuant to law of this state by a political subdivision thereof~~

(c) or A ~~by the~~ civil service rule or regulation ~~commission~~.

### 2-9.2 APPLICATION

An employee who reports, or who is known by the appointing authority to have indicated an intent to report, ~~such~~ violations or suspected violations ~~shall be~~ is protected by this rule, unless the employee knew the report was false. This protection ~~shall extend~~ (1) to an employees who participates in, or who ~~were~~ was known by the appointing authority to have indicated an intent to participate in, a court proceeding or an investigation, hearing, or inquiry conducted by a public body, and (2) to employees who participate in, or who were known by the appointing authority to have indicated an intent to participate in, a court proceeding.

### 2-9.3 FORMS OF REPRISAL

Reprisal includes ~~such~~ actions such as discharge, threats of discipline, or arbitrary and capricious changes in the conditions of employment.

## 2-10 LEAVE OF ABSENCE WITH PAY

### 2-10.1 AUTHORIZATION

An appointing authority may authorize salary payments ~~in whole or part to an employees with status in order to permit them to~~ attend school, visit other governmental agencies, or ~~undertake any other in any other approved manner to devote themselves to systematic~~ improvement of the knowledge or skills required in the ~~performance of their employee's work.~~ Salary payments may be in whole or in part.

### 2-10.2 ADMINISTRATIVE LEAVE

#### ~~2-14.1~~ AUTHORIZATION

~~An~~ The appointing authority may grant administrative leave with pay for necessary absence from duty, for which annual, sick, or other leave with pay is not applicable. Additionally, the appointing authority ~~is required to must~~ grant administrative leave when ~~such leave has been specifically prescribed required by the~~ civil service commission.

## 2-11 LEAVE OF ABSENCE WITHOUT PAY

### 2-11.1 AUTHORIZATION

~~An appointing authority may grant A~~ an employee in the classified service, with status, may be allowed a leave of absence without pay and without loss of employment status, ~~upon approval of the appointing authority.~~ Additionally, the appointing authority ~~is required to must~~ grant a leave of absence without pay when ~~such leave has been~~ specifically prescribed by the commission.

### 2-11.2 RESTORATION TO POSITION

~~When an authorized leave of absence expires, An~~ the employee must be granted leave of absence without pay shall be restored to the position formerly occupied or ~~to an equivalent position, on the expiration of the leave or, if approved by t~~ The appointing authority may approve restoration, before the expiration of the leave.

### 2-11.3 ABOLISHMENT OF POSITION

If the position of an employee ~~who has been granted leave of absence without pay is~~ abolished during a leave of absence without pay, ~~that employee shall be~~ is returned to the classified service in accordance with rule 2-42-19.



#### 2-11.4 ANNUAL LEAVE BALANCE

**(a) Retention during leave.** An employee may ~~elect~~ choose to retain an annual leave balance during ~~the period of a~~ leave of absence in accordance with ~~provisions contained in~~ the official compensation plan.

**(b) Limitation and exception.** Payment for annual leave due an employee who ~~fails to~~ does not return from ~~a~~ leave of absence ~~shall be~~ is at the employee's last rate of pay. ~~An employee granted a waived rights leave of absence may not carry any annual leave balance during the period of such leave of absence.~~

#### 2-11.5 MEDICAL LEAVE OF ABSENCE.

An appointing authority may grant a medical leave of absence without pay for up to 6 months to an employee with status after the employee's sick leave is exhausted. An appointing authority is authorized to extend the medical leave to a maximum of one year. Any extension of a medical leave beyond one year requires the approval of the state personnel director. If an employee does not return after expiration of a medical leave, the appointing authority shall separate the employee.

### 2-12 WAIVED RIGHTS LEAVE OF ABSENCE

An appointing authority may grant a waived rights leave of absence without pay for up to one year to an employee with status. ~~may be granted a waived rights leave of absence, for a period up to one year, upon approval of the appointing authority.~~ Any extension beyond one year requires the approval of the state personnel director. An employee granted a waived rights leave of absence cannot carry any annual leave balance during the leave. An employee on a waived rights leave ~~shall have~~ no right to return to the position formerly occupied or to an equivalent position upon expiration of the leave. If the employee returns to the classified service ~~prior to~~ before the expiration of the waived rights leave through normal selection processes, the employee ~~shall~~ is not be considered to have ~~had~~ a break in service. If ~~the employee does not returned~~ to the classified service ~~before~~ prior to or upon the expiration of the leave, the employee ~~shall be~~ is separated.

### 2-13 VETERANS' PREFERENCE AND MILITARY LEAVE

#### 2-13.1 DEFINITION: VETERANS; DISABLED VETERANS

A veteran is any person ~~with who has had not less than ninety (90) or more~~ calendar days of active service in the armed forces of the United States during any period covered by a selective service law and who has received an honorable discharge or other suitable evidence of honorable active service. A person, other than a disabled veteran, who has retired from any branch of the armed forces is ineligible for veterans' preference. A *disabled veteran* is one

who the Veterans Administration or a branch of the military service has determined to be eligible for receiving disability compensation.

### 2-13.2 PREFERENCE CREDIT POINTS

Preference credit will be applied as follows:

**(a)** Within five (5) years after a of the date of the veteran's release from active duty, five (5) preference credit points shall be are added, upon request, to the final passing score in any eligible examination taken by the veteran.

**(b)** Without regard to time limitations, five (5) preference credit points shall be are added, upon request, to the final passing score in any eligible examination taken by surviving spouses of veterans.

**(c)** Without regard to time limitations, ten (10) preference credit points shall be are added, upon request, to the final passing score in any eligible examination taken by disabled veterans, spouses of disabled veterans having greater than 50 percent disability, surviving spouses of veterans having children under eighteen (18) years of age, or surviving spouses of veterans with continued parental care of a disabled child.

### 2-13.3 REGULAR MILITARY LEAVE OF ABSENCE

~~Any classified employee in an indefinite appointment occupying a classified position by appointment of unlimited duration who enters military service in the armed forces of the United States under the provisions of the selective service law, by call to duty, or by voluntary entrance in lieu of being called to duty, thereof shall be is entitled to a military leave of absence without pay for the period of time required to fulfill the military obligation. If the employee voluntarily remains in military service beyond the period of time required by selective service law, the leave and right to restoration to the position formerly occupied or an equivalent position shall automatically terminates. S. Continuous state service credit shall be is allowed for the period of the military leave of absence.~~

**(a) Return from Regular Military Leave of Absence.** ~~In order to~~ To return to the classified service, the veteran must make application in writing to the appointing authority within six (6) months of after release from active duty in the armed forces and/or from date of discharge from veterans' hospital. The appointing authority shall restore the veteran to the position formerly occupied or an equivalent position within thirty (30) calendar days of the filing of such application.

### 2-13.4 TEMPORARY MILITARY LEAVE OF ABSENCE

An appointing authority shall grant a temporary military leave of absence to a classified employee occupying an indefinite position who is in a reserve component of the United States armed forces when ordered to active or inactive duty training. ~~Any employee occupying a classified position by appointment of unlimited duration and who is a member of a reserve~~

component of the armed forces of the United States shall be entitled to a temporary military leave of absence when ordered, whether voluntarily or involuntarily, to active duty training or inactive duty training. A temporary military leave of absence for active duty training shall be is with pay; if the military pay is less than the employee's regular state salary. The pay is equivalent to the difference between the employee's military pay and the regular state salary for each day of absence from scheduled state employment for those same days. The ~~Such~~ leave ~~shall cannot~~ exceed ~~fifteen (15)~~ regularly scheduled ~~work days~~ workdays in any fiscal year. Continuous state service credit shall be allowed for the period of temporary military leave of absence.

**(a)** If active duty training exceeds ~~fifteen (15)~~ regularly scheduled work days in ~~any~~ fiscal year, the employee may ~~elect choose~~ to be placed on regular military leave of absence without pay; or use ~~utilize~~ annual, or compensatory time accruals for the remainder of the period of training. The leave and the right to restoration to the position formerly occupied or an equivalent position ~~shall terminates~~; if the employee fails to return to the classified position within ~~fifteen (15)~~ calendar days ~~of after~~ release from training duty ~~and/or after from date of discharge from hospitalization incident to that training~~. State service credit ~~shall be~~ is allowed for the period of the military leave of absence without pay.

**(b) Holidays Occurring During Temporary Military Leave.** An employee in full pay status ~~shall be~~ is entitled to holiday pay for a designated holiday ~~which that~~ occurs or is observed during the period of a temporary military leave of absence. Military pay earned on a holiday ~~shall is not be~~ considered in determining the amount of state salary for the holiday.

## 2-13.5 EMERGENCY MILITARY LEAVE OF ABSENCE

An appointing authority shall grant an emergency military leave of absence to a ~~Any classified employee in an indefinite appointment occupying a classified position by appointment of unlimited duration and~~ who is a member of a reserve component of the armed forces and is ordered to perform emergency duty, by compulsory call of the Governor or the President, ~~shall be entitled to an emergency military leave of absence. Such~~ The leave shall is be with pay; if the military pay is less than the employee's regular state salary, for each day of absence from scheduled state employment. The pay is equivalent to the difference between the employee's military pay and regular state salary. ~~for each day of absence from scheduled state employment for those same days, but shall not exceed thirty~~ Pay is limited to (30) calendar days. Holiday pay ~~shall be~~ is handled as prescribed in rule 2-13.4(b). ~~Section 2-5.4(b). Should the period of~~ If the emergency duty exceeds ~~thirty (30)~~ calendar days, the employee may ~~elect choose~~ to be placed on regular military leave of absence without pay; or use ~~utilize~~ annual leave; or compensatory time accruals for the remainder of the duty period. After ~~Upon~~ release from emergency duty, the employee ~~shall be~~ is restored immediately to the position formerly occupied. Continuous state service credit ~~shall be~~ is allowed for the period of emergency military leave of absence.

## 2-13.6 EDUCATIONAL LEAVE

~~An appointing authority may grant A~~ a leave of absence without pay ~~may be granted to a~~ veteran who has completed ~~one thousand forty (1,040) hours~~ 6 months in the classified service ~~and who desires to take advantage of the educational grants made available by federal funds for veterans' education.~~

## 2-13.7 ABOLISHMENT OF POSITIONS

If the former position ~~shall have~~has been abolished, the veteran ~~shall be~~is entitled to another position in accordance with the provisions of the civil service rules and regulations governing employment preference.~~rule.~~

## ~~2-16.82-13.8~~ 2-13.8 REALLOCATION/RECLASSIFICATION

If the former position ~~shall have~~has been ~~reallocated-reclassified~~ either higher or lower, the veteran ~~shall have~~has the same rights with respect to the ~~reallocated-reclassified~~ position as would have applied had there been no interruption of state service.

## 2-13.9 COMBINING OF POSITIONS

If the former position ~~shall have~~has been combined with another position, the veteran's right to the combined position with respect to its present incumbent ~~shall be~~is determined in accordance with the civil service rules and regulations governing employment preference.~~rule.~~

## 2-13.10 EXAMINATION UPON RETURN

A veteran returning from military leave ~~shall have~~has the right to take any examination given during that ~~military~~ leave for which the veteran would have been eligible ~~to take~~ had there been no interruption of state service. The request for examination ~~shall must~~ be made within ~~six (6) months~~ upon-after return to state service.

## 2-13.11 STATE SERVICE

~~For the purpose of the employment preference purposes~~schedule, the period of a regular military leave of absence ~~shall be~~is considered as state service in the same position and ~~in the same department where the veteran was employed at the time of when inducted~~ in the armed forces.

## 2-13.12 SALARY STEP INCREASE

If the last service rating of a veteran returning from military leave was satisfactory, ~~such the~~ veteran ~~shall be~~is placed at the salary step ~~which that~~ would have applied had there been no interruption of state service.

## 2-14 SUPPLEMENTAL EMPLOYMENT OUTSIDE THE CLASSIFIED SERVICE

### ~~2-14.1 SPECIFIED~~

Supplemental employment outside the classified service is permitted if all of the following conditions are met:

(a) The supplemental outside employment must ~~in no way not~~ conflict with the employee's hours of state employment and must not conflict in quantity or interest ~~conflict in any way with~~ the satisfactory and impartial performance of state duties.

(b) The employee must secure the written approval of the appointing authority before engaging in ~~any~~ supplemental outside employment.

(c) The employee must inform ~~keep~~ the appointing authority ~~informed~~ of contemplated changes in supplemental outside employment.

## 2-15 ASSUMPTION INTO CLASSIFIED SERVICE

### 2-15.1 ASSUMPTION AUTHORIZED

If the legislature, the governor, a court, or the state personnel director determines that an existing position outside the classified service is or will become a position in the state service, the director shall assume the position into the classified service. The assumption must ~~shall~~ be completed in accordance with ~~these~~ civil service rules and regulations, ~~issued by the director.~~ The assumption ~~shall~~ must also be completed in accordance with any applicable law, executive order, or court order, to the extent the law or order is not inconsistent with the civil service commission's constitutional authority, or the civil service ~~these rules, or the~~ and regulations.

### 2-15.2 CLASSIFICATION OF ASSUMED POSITIONS

The state personnel director shall evaluate the position to be assumed and shall establish and ~~allocate~~ classify the position within the classified service in the same manner as a newly established position. Only the appointing authority may appeal the ~~allocation~~ classification of an assumed position.

### 2-15.3 APPOINTMENT

The appointing authority shall make an appointment to an assumed position in the same manner as an appointment to a newly established position. However, the state personnel director may authorize the appointment of the incumbent occupying the same position outside the classified service in accordance with the following standards:

(a) **Merit selection and three years' of service.** ~~If the incumbent meets both the following criteria, the director may authorize the an appointment of the incumbent to the classified position without further testing:~~ of an incumbent with at least 3 years satisfactory service at assumption if the incumbent's original selection was substantially based on merit. The incumbent must satisfactorily complete a probationary period as a classified employee. If the incumbent does not satisfactorily complete the initial probationary period, the appointing authority shall separate the incumbent from the classified service.

(1) ~~The incumbent was originally selected for the position in a manner that was substantially based on merit.~~

(2) ~~The incumbent had at least three years' satisfactory service at the time of the assumption.~~

~~— The incumbent shall be required to satisfactorily complete a probationary period as a classified employee. If the incumbent does not satisfactorily complete the initial probationary period, the incumbent shall be separated from the classified service.~~

(b) **No merit selection or less than three years' of service.** ~~If the incumbent meets either of the following criteria, the director may authorize the incumbent to be appointed a temporary to the classified position appointment for a period not to exceed six months for an incumbent with less than 3 years service at assumption or whose original selection was not substantially based on merit:~~ During the 6 months, the department shall examine the incumbent on a noncompetitive basis. The incumbent must also satisfactorily complete a probationary period as a classified employee. If the incumbent does not satisfactorily complete the examination or initial probationary period, the appointing authority shall separate the incumbent from the classified service.

~~The incumbent was not originally selected for the position in a manner that was substantially based on merit.~~

~~The incumbent had less than three years' satisfactory service at the time of the assumption.~~

~~— During the six month 12 or 18 month period, the department of civil service shall examine the incumbent on a noncompetitive basis. The incumbent shall also satisfactorily complete a probationary period as a classified employee. If the incumbent does not satisfactorily complete the examination or the initial probationary period, the incumbent shall be separated from the classified service.~~

## 2-15.4 TREATMENT OF INCUMBENTS

An incumbent who is appointed to a position assumed into the classified service is shall, for all purposes, be considered as a new hire without status as of the date of the assumption, except as authorized by rule, regulation, or the state personnel director. Unless prohibited by these rules, the state personnel director may approve in writing the transfer to the classified service

of some or all of a benefit, credit, status, seniority, or contract right accrued by an incumbent under a previous employer.

## 2-15.5 PAY AND BENEFITS

~~The pay and benefits for an incumbent appointed to a position shall be established by the~~ The state personnel director shall establish the pay and benefits for an incumbent appointed to a position after consultation with the state employer and the appointing authority in accordance with the following standards:

**(a) Pay.** The initial rate of pay for an incumbent whose position is assumed ~~in the state~~ classified service shall be is established at the state pay level closest to, but not less than, the incumbent's rate of pay ~~before prior to the date of~~ assumption. The state personnel director may, at the request of the state employer or the appointing authority, approve continuation of a rate of pay that exceeds the maximum for the classification if the incumbent's pay is red-circled.

**(b) Transfer of annual leave and sick leave balances.** If the incumbent has not been compensated for annual and sick leave balances outstanding on the date of assumption, the state personnel director may approve the transfer of all or a portion of the balances to the classified service. The number of hours transferred ~~shall cannot~~ exceed the maximum number permitted in the compensation plan. The state of Michigan ~~shall is~~ not be liable for the value of any excess balance that is not transferred.

**(c) Longevity.** If the previous employer had a longevity pay plan ~~or its equivalent~~, the state personnel director may authorize longevity credit for employment ~~prior before to the date~~ of assumption. If the previous employer had no longevity pay plan ~~or its equivalent~~, the incumbent ~~is shall not be~~ eligible for longevity credit.

**(d) Retirement.** The incumbent ~~shall be~~ is eligible for retirement credit only as provided by law.

## 2-15.6 PRIOR EMPLOYMENT CONTRACTS

Unless expressly agreed to in a writing, signed by the state employer and the state personnel director, an employment contract between an employee assumed into the classified service and the previous employer, including a collective bargaining agreement, ~~shall cannot~~ be assumed by the state of Michigan and ~~shall be~~ is void.

## 2-15.7 SPECIAL OR UNIQUE CIRCUMSTANCES

If ~~there are~~ special or unique circumstances ~~that~~ require treatment of an incumbent assumed into the classified service that is prohibited by these rules, the state personnel director, with the consent of the civil service commission, is authorized to approve in writing such special or unique treatment as may be required for the good of the classified service.

## ~~2-19.1~~ DEFINITIONS

~~As used in these rules:~~

**NOTE 6:** Definitions in this rule have been relocated to Chapter 8.

## 2-16 RETIREMENT

### 2-16.1 COOPERATION WITH BOARD

The state personnel director shall cooperate with the state employees' retirement board in maintaining a comprehensive retirement system for classified employees.

### 2-16.2 RETURN TO WORK FROM RETIREMENT

Regardless of any other provision of these rules, a state classified employee retired or retiring under ~~the provisions of~~ any state of Michigan retirement system who applies for and obtains employment in a classified position ~~shall be~~ is considered, in all respects, as a new employee, subject to the following conditions:-

**(a) Exception, reinstatement.** A retired employee may be reinstated, but ~~shall cannot~~ receive any other employment benefits based upon previous classified service.

**(b) Exception, disability retirement.** A classified employee who ~~has retired~~ retires under a duty or nonduty disability provision of any state of Michigan retirement system and returns directly to a classified position ~~upon after the cessation of the disability ends shall be is~~ considered a continuing employee, but ~~shall cannot~~ receive state service credit for any purpose for the period of the disability retirement.

**(c) Exception, deferred retirement.** A classified employee who has taken a deferred retirement and is reinstated or rehired ~~prior to before~~ receiving a retirement benefit payment must requalify to receive prior service credit for longevity and annual leave.

## 2-17 TRAINING

### 2-17.1 RESPONSIBILITY

~~Agency management is primarily responsible. The prime responsibility for agency in-service training shall be assumed by agency management, but~~ However, the commission may direct the establishment of any training program it considers necessary.



## 2-17.2 TRAINING NEEDS

The state personnel director shall assist agencies in determining their needs and ~~in~~ devising and establishing programs to meet ~~such~~ those needs.

## 2-17.3 CONTINUING EDUCATION

The state personnel director shall provide agencies with continuing education information and shall work with agencies and continuing education providers to establish programs that meet the occupational needs of state employees.

## 2-17.4 ADVISORY SERVICES

The state personnel director shall provide agency trainers with materials and manuals and offer ~~such~~ advisory help ~~as is~~ requested by the agency.

## 2-17.5 INTERAGENCY TRAINING

The state personnel director shall initiate and encourage needed interagency training programs and shall assist individual state agencies, professional and employee organizations, and state educational institutions in ~~carrying on~~ providing interagency training.

# 2-18 APPEALS

## 2-18.1 CIVIL SERVICE APPEALS PROCEDURES

The state personnel director shall issue regulations governing procedures for grievances ~~procedures~~, technical appeals ~~procedures~~, labor relations appeals ~~procedures~~, and the employment relations board ~~procedures~~.

## 2-18.2 SUBPOENA

The following conditions regulate the appearance of witnesses and production of documents for civil service hearings and, ~~when~~ re subpoenas are deemed essential to a fair hearing, govern the issuance, service, revocation, and compliance with subpoenas:-

**(a) Classified employees.** ~~A~~ Classified employees, as a part of their ~~employee's~~ duties, shall appear as directed by a civil service adjudicating officer, without issuance of a subpoena.

**(b) Requirements.** Upon a showing of necessity, ~~When necessary to obtain relevant and material evidence needed to resolve disputes involving conditions of employment,~~ an adjudicating officer, upon the officer's own motion or on the written petition of ~~any~~ party, may issue a subpoenas for relevant and material evidence. The subpoena may require ~~ing~~ the attendance and testimony of ~~any~~ person and the production of ~~any~~ evi-

1 dence, including books, records, papers, correspondence, or documents possessed by or  
2 under a person's control. ~~in their possession or under their control, upon a showing of~~  
3 ~~necessity.~~

4 **(c) Applications and review.** When a hearing is not in session, an application for a  
5 subpoena ~~will normally be~~ is reviewed and acted upon by the adjudicating officer assigned  
6 to the case. In the absence of the assigned adjudicating officer, an application for a  
7 subpoena ~~at a time when a hearing is not in session shall be~~ may be reviewed acted on by  
8 the assigned scheduling officer or by the director of the hearings division, ~~either of whom~~  
9 ~~may then issue a subpoena.~~ The assigned adjudicating officer may review ~~The granting~~  
10 ~~or denial of a subpoena may be reviewed by the assigned adjudicating officer at the~~  
11 ~~hearing. During a hearing, an Application for a subpoenas is filed during the hearing~~  
12 ~~shall be filed with the assigned adjudicating officer.~~

13 **(d) Service, proof.** ~~A S~~subpoenas may be served at any place within ~~the state~~ Michigan. A  
14 subpoena ~~shall~~ commands the person to whom it is directed to attend and give  
15 testimony, testify at the hearing, to produce the things designated, or to give a deposition.  
16 Service ~~shall~~ must be made by delivery of a copy to the person served. ~~Subpoenas shall~~  
17 ~~be served personally by a~~ An individual of suitable age and discretion who is not a party to  
18 the grievance or other dispute must personally serve the subpoena. Verified proof of  
19 service ~~shall~~ must be filed with the adjudicating officer.

20 **(e) Time limits; ~~mailing defined.~~** Within ~~twenty-four (24)~~ hours after service of the  
21 subpoena on the person to whom it is directed, the requesting party must mail a copy of  
22 the subpoena to each named party to the grievance shall be mailed a copy of the  
23 subpoena, by the requesting party. ~~Mailing means depositing a properly addressed,~~  
24 ~~sealed envelope, with the document to be mailed enclosed therein and with first class~~  
25 ~~postage fully prepaid thereon, in a United States governmental mail receptacle.~~

26 **(f) Costs.** The cost of service, ~~and witness,~~ and mileage fees ~~shall be~~ is borne by the party  
27 who requested the subpoena. However, when a subpoena is issued upon motion of the  
28 adjudicating officer, the cost ~~shall be~~ is borne by the department of civil service  
29 service department. Witness and mileage fees ~~shall be~~ are the same as are paid to  
30 witnesses in the Michigan circuit court, ~~s of this state.~~

31 **(g) Revocation.** ~~Any~~ person served with a subpoena who does not intend to comply ~~with~~  
32 ~~the subpoena shall,~~ within ~~five (5) working~~ days after the date of service of the subpoena,  
33 petition in writing to revoke the subpoena. ~~Such~~ A petition to revoke, if made ~~prior to~~  
34 before the hearing, ~~shall~~ must be filed with the director of the hearings division, who shall  
35 refer the petition to the adjudicating officer for ruling. A ~~P~~petitions to revoke subpoenas  
36 filed during ~~the a hearing shall~~ must be filed with the adjudicating officer. ~~All copy of the~~  
37 ~~petitions to revoke shall~~ must be served upon the party at whose request the subpoena  
38 was issued. The adjudicating officer or the director of the hearings division shall give  
39 prompt ~~N~~notice of the filing of a petitions to revoke ~~shall be promptly given by the~~  
40 ~~adjudicating officer or the director of the hearings division to the party at whose request~~  
41 ~~the subpoena was issued. The adjudicating officer shall revoke a subpoena if (1) if the~~

evidence required to be produced does not relate to the matter in issue, ~~or (2) if the subpoena does not describe said the evidence with sufficient particularity, or (3) if the subpoena is invalid;~~ for any other legally sufficient reason, ~~sufficient in law, the subpoena is invalid.~~

**(h) Compliance.** If a person does not comply with a subpoena, the party who requested the subpoena may file a petition for an order requiring compliance ~~In case of refusal or failure of a person to comply with a civil service subpoena, the party on whose behalf it was issued may file a petition in the circuit court for Ingham County or for the county in which the hearing is held, for an order requiring compliance.~~ Pending or in lieu of court enforcement action, the adjudicating officer may adjourn the hearing or take whatever other action ~~the adjudicating officer deems appropriate, under the circumstances,~~ including, but not limited to, presuming that the evidence or testimony of a witness would be adverse to any party who is responsible for the failure or refusal of a witness to testify. ~~However, This does not mean that the a~~ party who requests a subpoena ~~must is not~~ required to call that witness or present the witness for cross-examination.

### 2-18.3 APPEAL TO BOARD AND COMMISSION

**(a) Appeal.** An employee dismissed for cause from the classified service may appeal as of right to the ~~employment relations board and the civil service~~ commission from a final ~~civil service department adjudication~~ decision of a civil service hearing officer upholding the dismissal. In all other cases, including grievance arbitration, an appeals may be taken to the ~~employment relations board and the~~ commission by a party only upon application and leave granted.

**(b) Bases for granting leave.** In the discretion of the ~~board and the civil service~~ commission, leave may be granted in any matter that involves (1) a ~~n~~ alleged violation of article 11, section 5, of the constitution, (2) a ~~n~~ alleged violation of a civil service ~~commission rule or regulation of the department of civil service,~~ or (3) an alleged abuse of discretion. An Appeals from arbitration ~~shall is~~ be governed by the commission policy on deferral to arbitration.

**(c) Final judgment by commission.** The employment relations board shall hear all appeals on behalf of the civil service commission and shall file Aa final judgment or decision recommendation by the employment relations board shall be filed with the civil service commission. A final ~~judgment or decision~~ recommendation of the board ~~shall~~ becomes effective as the judgment or decision of the commission ~~when if~~ approved by the commission. If the commission does not approve the recommendation ~~judgment or decision of the board as filed,~~ the commission (1) may remand the matter to the board or other tribunal for further action, (2) may issue a final judgment or decision of the commission that modifies or vacates the judgment or decision of the board, or (3) may take any other action within the power of the commission.

## 2-18.4 COMMISSION MAY ASSUME JURISDICTION

The commission reserves the authority to assume jurisdiction of any proceeding at any time ~~prior to~~before final action by the board and to take appropriate action.

## 2-18.5 ATTORNEY FEES AND INTEREST

The following provisions ~~are applicable~~apply to all civil service grievance and technical appeal proceedings:

**(a) Attorney fees.** ~~No~~A monetary award ~~may be~~cannot be made for attorney fees, witnesses fees, costs, or other expenses ~~arising out of, or attributable to;~~ the grievance or technical appeal.

**(b) Interest on award.** An employee ~~awarded monetary damages~~ may be awarded interest on a back pay award only if the employee proves by clear and convincing evidence that the damages ~~were the result of~~resulted from intentional, malicious, or unconscionable prolongation of the proceedings by the appointing authority. ~~Interest on the award shall be~~is calculated from ~~the date of~~ the earliest filing of the grievance or technical appeal at the rates ~~provided for~~ interest on a money judgment in a civil action, ~~as provided in the revised judicature act,~~ Michigan Compiled Laws (MCL) A §600.6013(6), as amended.

**(c) Offer of settlement.** If an appointing authority makes a bona fide, reasonable written offer of settlement in a grievance or technical appeal, no interest ~~shall be~~is allowed beyond the date the written offer of settlement is rejected by the grievant. Any offer of settlement that is not accepted within ~~twenty-one (21)~~ calendar days after the offer is made ~~shall be~~is considered rejected. ~~A B~~Bona fide, reasonable written offer of settlement ~~means is~~ an offer of settlement that is at least ~~not less than ninety (90)~~ percent of the amount of back pay award, calculated as of the date the settlement offer is made.

## 2-19 TECHNICAL APPEAL PROCESS

### ~~2-23.1~~ DEFINITIONS

~~As used in these rules:~~

**NOTE 7:** The definitions in this section have been relocated to Chapter 8.

### 2-19.1 APPEAL OF TECHNICAL DECISION AUTHORIZED

A person directly affected and aggrieved by a technical decision ~~is authorized to~~may file a technical appeal within ~~fourteen (14)~~ calendar days after the date of mailing of the technical decision. The technical appeal ~~shall~~must be filed with the department of civil service.

## 2-19.2 ADMINISTRATIVE DENIAL OF APPEAL

The department of civil service may administratively dismiss a technical appeal without prior notice or hearing for any of the following reasons:

(a) The department of civil service lacks jurisdiction over a necessary party or over the subject matter of the technical appeal.

(b) The technical appeal is untimely.

(c) Another pending action is ~~pending that~~ involves the same parties and substantially the same or similar claims.

(d) The technical complainant is not authorized to file a technical complaint.

## 2-19.3 CIVIL SERVICE TECHNICAL APPEAL PROCEDURES

If the technical appeal is not administratively dismissed, it ~~shall be~~ is referred to a technical appeal officer for disposition. The technical appeal officer shall conduct an expeditious review ~~of the technical appeal in accordance with these civil service rules and regulations, issued by the state personnel director.~~ The technical appeal officer shall decide the matter based on the departmental records and the written submissions of ~~any~~ interested persons. The technical appeal officer is not authorized to conduct a hearing, but may meet with the technical complainant and other interested persons to review and discuss the appeal. The technical appeal officer shall issue a written technical appeal decision.

## 2-19.4 FURTHER APPEAL

A person who participated in the technical appeal and is directly affected and aggrieved by the decision of a technical appeal officer may file an application for leave to appeal with the employment relations board.

# 2-20 LEGAL SERVICES

## 2-20.1 PROVISION OF LEGAL SERVICES; CONDITIONS

An appointing authority, in cooperation with the attorney general, shall pay for or engage the services of an attorney to advise and appear for a classified employee in any claim or action against the employee alleging negligence or other actionable conduct, subject to the following conditions:

(a) ~~Whenever any claim is made or any civil action is commenced against any employee in the classified service alleging negligence or other actionable conduct, if t~~ The employee must have been acting was in the course of employment at the time of when the alleged conduct occurred and had a reasonable basis for believing that the conduct was within the

1 scope of the authority delegated to the employee, ~~the appointing authority, in~~  
2 ~~cooperation with the attorney general, shall, as a condition of employment, pay for or~~  
3 ~~engage or furnish the services of an attorney to advise the employee as to the claim and to~~  
4 ~~appear for and represent the employee in the action.~~

5 (b) No such legal services ~~are shall be permitted~~ required in connection with prosecution of a  
6 criminal suit against an employee.

7 (c) Nothing in this rule ~~shall requires~~ the reimbursement of any employee or insurer for legal  
8 services to which the employee is entitled ~~pursuant to any~~ under a policy of insurance.

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9  
10 *[End of Chapter 2]*  
11

# Chapter 3:

## SELECTION ~~RULES~~

### ~~3-1~~ DEFINITIONS

**NOTE 8:** Definitions in this rule have been relocated to Chapter 8.

### ~~3-23-1~~ APPRAISAL METHODS ~~EXAMINATIONS~~

#### 3-1.1 AUTHORITY

The department of civil service shall prepare or approve ~~examinations~~ appraisal methods for all classified positions.

#### 3-1.2 CONTENT AND METHOD

~~Examinations shall consist of appraisal~~ Appraisal methods that must assess relevant, job-related knowledge, skills, abilities, and other qualifications necessary for successful job performance. The department of civil service may use another organization's ~~examination~~ appraisal results.

### ~~3-2-33-1.3~~ ~~APPLICATION AND SCHEDULE OF EXAMINATIONS~~

The department of civil service shall establish procedures for persons seeking positions in the classified service. ~~The department of civil service shall publish an examination schedule.~~

#### 3-1.4 REASONABLE ACCOMMODATIONS

The department of civil service shall make reasonable accommodations in its application and ~~examination~~ appraisal process for a person with a disability who makes a reasonable request for accommodation in advance. The department of civil service may offer an alternative evaluation method for a person with a disability if the person is unable to participate in the regular ~~examination~~ appraisal process. The department of civil service ~~is need not required to~~ make an accommodation that would cause undue hardship, ~~on the department.~~

### ~~3-2.5~~ EXAMINATION ADMINISTRATION

~~After considering existing employment lists, labor market data, and other relevant factors, the department of civil service may limit the administration of an examination to meet the need for:~~

~~(a) A representative employment list.~~

~~(b) An employment list in a specific location.~~

~~(c) Specific or specialized job skills.~~

~~(d) Other work force requirements.~~

### ~~3-2.6~~ SCORING OF EXAMINATIONS

~~The department of civil service shall establish criteria for scoring examinations. Whenever possible, the department shall divide examination results into broad categories of relative performance.~~

## 3-1.5 INTEGRITY OF PROCESS

To be considered for appraisal or appointment, an applicant shall comply with the established procedures and processes, to be considered for examination or appointment.

**(a) Prohibited Practices.** During the application, ~~examination~~appraisal, or appointment process, ~~an person applicant~~ shall not do any of the following:

**(1)** Make any false statements or omissions of a material fact.

**(2)** Misrepresent education or experience.

**(3)** Engage in deception or fraud.

**(4)** Cheat.

**(5)** Compromise the integrity of the ~~examination~~appraisal process.

**(6)** Violate rule 2-6, Drug and Alcohol Testing

**(b) Sanctions.** If the department of civil service finds that an applicant has engaged in any prohibited act, the department may do any of the following:

**(1)** Cancel or limit the applicant's eligibility for state employment.

**(2)** Require the separation of the applicant from state employment.

**(3)** Impose any other or additional sanction that is appropriate.



## 3-2 APPLICANT POOLS AND RECALL LISTS

### ~~3-3.13-2.1~~ EMPLOYMENT LISTS APPLICANT POOL

The department of civil service ~~shall~~ may establish and maintain ~~employment lists~~ applicant pools. The department of civil service may divide ~~employment lists~~ applicant pools by geographic area, organizational unit, occupational specialty, type of appointment, or other criteria. The state personnel director shall issue regulations for the duration and use of ~~employment lists~~ applicant pools. A person's eligibility to remain ~~on an employment list~~ in an applicant pool or to be referred for a position ~~shall be~~ is determined under the civil service rules and regulations in effect at the time the department of civil service refers names of qualified ~~candidates~~ applicants to an appointing authority.

### ~~3-3.33-2.2~~ REMOVAL FROM EMPLOYMENT LIST APPLICANT POOL

The department of civil service may remove a person from an ~~employment list~~ applicant pool for any ~~one~~ of the following reasons:

(a) Appointment.

~~(b)~~ Failure to respond to an inquiry regarding possible employment.

~~(c)~~ An indication of lack of interest in an employment opportunity.

~~(d)~~ Failure to accept employment.

(b) ~~(e)~~ Separation or retirement from state service.

(c) ~~(f)~~ Evidence that the person is unable to perform satisfactorily, with or without reasonable accommodations, the essential duties of the job.

(d) ~~(g)~~ Evidence of conduct that indicates that the person is unfit or unsuitable for appointment.

(e) ~~(h)~~ Conduct that violates rule 3-1.5, Integrity of Process ~~3-2.7~~.

(f) ~~(i)~~ Expiration of an applicant pool or eligibility.

### 3-2.3 RECALL LISTS

(a) Placement on recall list. An employee is eligible to be placed on a recall list only if the employee: (1a) gained status from an indefinite appointment to a permanent classified position, and (2b) is laid off, demoted, or otherwise displaced for reasons of administrative efficiency.

(a)(b) Recall. A person is ~~eligible to be~~ recalled in ~~accord with~~ accordance with the civil service regulations in effect at the time of the recall. ~~No~~ Recall lists are not created or

maintained for ~~classifications or positions~~ that are protected from the application of employment preference in rule ~~2-42-19~~ or applicable regulations.

### 3-2.4 REMOVAL FROM RECALL LISTS

The department of civil service may remove a person from a recall list for any of the following reasons:

(a) Appointment.

(b) Failure to respond to an inquiry regarding possible employment.

(c) An indication of lack of interest in an employment opportunity.

(d) Failure to accept employment.

~~(b)~~(e) Separation or retirement from state service.

~~(e)~~(f) Evidence that the person is unable to perform satisfactorily, with or without reasonable accommodations, the essential duties of the job.

~~(d)~~(g) Evidence of conduct that indicates that the person is unfit or unsuitable for appointment.

~~(e)~~(h) Conduct that violates rule 3-1.5, Integrity of Process.

~~(e)~~(i) Expiration of an applicant pool or eligibility.

## 3-3 APPOINTMENTS AND JOB CHANGES CERTIFICATION

### 3-3.1 PROCESS

All ~~referrals and appointments~~ and job changes in the classified service ~~shall~~ must be made in accordance with ~~these~~ the civil service rules and regulations, ~~of the department of civil service.~~ Except where these

### 3-3.2 RECALL LISTS

A classified employee who achieved status and, as a result of a reduction in force, is moved to a lower classification level or laid off may be eligible to be placed on a recall list. Unless civil service rules or regulations of the department of civil service provide otherwise, certification appointment shall ~~is first~~ be limited to persons on recall lists.

### ~~3-4.2~~ REFERRAL

~~The department of civil service shall refer, or authorize the referral of, qualified candidates to appointing authorities for consideration for appointment to the classified service.~~

### 3-3.3 DEMOTION

(a) **Notice.** If an appointing authority intends to demote an employee, the appointing authority shall give prior written notice of the specific reasons for the demotion to the employee.

(b) **Conditions.** An appointing authority may demote an employee under any of the following circumstances:

~~(5)~~(1) If an employee is not performing satisfactorily.

~~(6)~~(2) If an employee's position is ~~reallocated~~ reclassified downward.

~~(7)~~(3) If the demotion is requested by the employee and approved by the appointing authority.

~~(8)~~(4) If the position occupied by the employee is abolished.

~~(9)~~(5) If the employee is displaced by the return to duty of another employee entitled to the position.

~~(10)~~(6) If the employee is displaced by another employee with more seniority during a reduction in force.

~~(11)~~(7) If the employee ~~fails to~~ does not satisfactorily complete a probationary period.

### 3-3.4 EMERGENCY APPOINTMENT

When emergency conditions require immediate action, an appointing authority is authorized to make an emergency appointment up to 28 calendar days. The state personnel director may approve an extension of an emergency appointment up to an additional 28 calendar days. An appointing authority cannot reappoint a person to a second consecutive emergency appointment within the same principal department, autonomous entity, or agency of convenience. An emergency appointment is authorized only when made in conformity with the civil service regulations of the department of civil service governing emergency appointments.

### 3-3.5 HIRE

An appointing authority may appoint an applicant to a position. The person must meet the qualifications established by the civil service commission and the department of civil service.

### 3-3.6 PROMOTION

An appointing authority may appoint a classified employee to a position at a higher classification level. The employee must meet the qualifications established by the civil service commission and the department of civil service.

### 3-3.7 REASSIGNMENT

An appointing authority may reassign an employee ~~from one position to another for which the employee is qualified. A reassignment must be into the same classification and level or to a new classification at the same level. Eligibility for reassignment must be based on (1) the preauthorized transfer and reassignment list of the department of civil service or (2) an individual qualification review by the department of civil service.~~ to (1) the same classification within the same department or autonomous entity or (2) another classification at the same classification level, within the same department or autonomous entity. If an employee is reassigned to another classification at the same classification level, the employee must have obtained status or the reassignment must be based on the preauthorized reassignment list of the department of civil service. A reassignment does not require the agreement of the employee. A reassignment is not an appointment and does not require the approval of the department of civil service.

#### ~~(a) Reassignment between principal departments or autonomous agencies; Limitations.~~

~~An employee may be reassigned from one principal department or autonomous agency to another, subject to the following additional provisions:~~

~~(1) The sending and receiving appointing authorities must certify in writing to the state personnel director that work force leveling or other redeployment needs warrant the reassignment of employees as provided by this rule [REF]3-4.6(a), and the state personnel director must concur.~~

~~(2) An employee who is reassigned has the right to refuse reassignment and, where necessary, to exercise employment preference within the sending department or agency instead of being reassigned.~~

~~(3) An employee may not be reassigned if there is an employee currently working for the receiving appointing agency who is on the receiving departmental recall list for the classification and level of the reassignment.~~

~~(4) An employee who is reassigned must receive written notice of the reassignment at least thirty (30) calendar days before the effective date of reassignment.~~

~~(5) Reassignment of a nonexclusively represented employee to a position covered by collective bargaining agreements shall be governed by the terms and conditions of the collective bargaining agreement.~~

~~(c) Regulations. The state personnel director shall issue regulations governing reassignments and transfers.~~

### 3-3.8 REINSTATEMENT

A classified employee ~~in satisfactory standing~~ who achieved status ~~in a class~~, and who is ~~subsequently demoted or separated or demoted while in satisfactory standing~~, is eligible for reinstatement. An appointing authority may reinstate an eligible person to (1) the classification in which the person last achieved status ~~prior to~~before the separation or

demotion; or (2) to a classification at the same or lower classification level for which the person is qualified. A person's eligibility for reinstatement is limited to 3 years after ~~the date of~~ separation or demotion. However, the ~~department of civil service~~ state personnel director may extend eligibility in ~~its~~ the regulations to meet work force needs.

### 3-3.9 TRANSFER

A classified employee ~~with status is eligible to be considered for transfer to another position within the classified service. An employee is eligible to transfer only~~ may be transferred to (1) ~~to a position in the employee's current class or classes for which the employee is certified by the department of civil service as qualified and the same~~ classification between departments or autonomous entities or (2) ~~at a level equal to or lower than the level at which the employee has status~~ a different classification at the same or lower classification level within a department, or between departments or autonomous entities. If the transfer is to a different classification, the employee must meet the qualifications established by the department of civil service. A transfer requires the approval agreement of the employee, and the approval of the appointing authority and the department of civil service.

## 3-4 RELATION TO COLLECTIVE BARGAINING

An appointing authority shall make all appointments in accordance with ~~these~~ civil service rules and regulations ~~of the department of civil service~~, unless a provision in a collective bargaining agreement regarding reassignment, transfer, layoff, or recall permitted by rule ~~6-36-4~~ provides otherwise.

## 3-5 PROBATION AND STATUS

### 3-5.1 PROBATIONARY PERIOD

**(a) New employee without status.** ~~A Every person newly appointed classified employee to a position in the classified service who does not have status in the classified service at the time of when appointedment shall be required to must~~ satisfactorily complete a working test period, called a probationary period, as a condition of continued employment.

**(b) Employee with status.** ~~An Every~~ employee with status who is appointed to a new classification level ~~shall must~~ satisfactorily complete a working test period, called a probationary period, as a condition of continued appointment in that position.

**(c) SES and SEMAS Exceptions.** ~~This rule 3-5 is not applicable does not apply to~~ persons appointed to positions in the senior executive service (SES) and the senior executive management assistant service (SEMAS).

### 3-5.2 LENGTH OF PROBATIONARY PERIOD

**(a) Minimum length.** The minimum length of a probationary period ~~shall be is 2,080 hours~~ 12 months of full-time employment or 18 months of less than full-time employment. ~~of paid service.~~

**(b) Extension of Probationary Period.** If the department of civil service or the appointing authority determines that (1) the probationary period has been insufficient to adequately test the performance of a probationary employee or (2) the performance of a probationary employee has been less than satisfactory, the department or the appointing authority may extend the probationary period for an employee. Any extension ~~may not exceed beyond~~ an additional 1,040 hours 6 months requires the approval of the state personnel director. The department or appointing authority shall give written notice of the extension of the probationary period to the employee.

### 3-5.3 UNSATISFACTORY SERVICE

**(a) Probationary Employee without status.** If an ~~probationary~~ employee without status does not perform satisfactorily during the probationary period, the appointing authority may dismiss the employee during the probationary period or within 28 calendar days after the ~~end of the~~ probationary period ends. The appointing authority shall give notice of a dismissal to the employee and the department of civil service ~~notice of any dismissal no later than 28 calendar days after the end of the probationary period ends.~~

**(b) Employee with status.** If an employee with status is appointed to a new classification level and does not perform satisfactorily during the probationary period, the appointing authority may, during the probationary period or within 28 calendar days after the ~~end of the~~ probationary period ends, (1) dismiss the employee from the classified service or (2) rescind the appointment and demote the employee.

### 3-5.4 SATISFACTORY SERVICE; NOTICE

If an ~~probationary~~ employee performs satisfactorily during the probationary period, the appointing authority shall give notice to the employee and the department of civil service within 28 calendar days after the ~~end of the~~ probationary period ends.

### 3-5.5 GRIEVANCE OF PROBATIONARY DISMISSAL OR DEMOTION

**(a) Probationary employee without status.** A probationary employee without status who is dismissed may grieve seek a review of the dismissal only within the departmental steps of civil service grievance procedure. ~~provided by the appointing authority.~~ The employee ~~may not~~ appeal a final determination of the appointing authority to the department of civil service or the civil service commission unless the employee was dismissed in violation of rule 1-71-2.

**(b) Employee with status; rescission of appointment and demotion.** A probationary employee with status whose appointment is rescinded and who is demoted to a classifica-

tion level not less than the level occupied at the time of the appointment may grieve the recission and demotion. In any grievance hearing, the appointing authority ~~shall~~ must first articulate the reasons for rescinding the appointment. However, the employee ~~shall~~ has the burden of proving by a preponderance of the evidence that the recission and demotion ~~were~~ was arbitrary and capricious or ~~was a violation of rule 1-6 or 1-7.1-1.1 or 1-2.~~

**(c) Dismissal of employee with status.** A probationary employee with status who is dismissed from the classified service may grieve the dismissal. In any grievance hearing, the employer ~~shall~~ has the burden of proving by a preponderance of the evidence that it had just cause to dismiss the employee.

### 3-5.6 STATUS DEFINED

An employee who has been ~~examined, certified, appraised, qualified,~~ properly appointed on an indefinite or limited-term basis, and who has satisfactorily completed the probationary period ~~shall have~~ so long as while status the employee remains continuously employed in the classified service. An employee who has achieved status and ~~who~~ later accepts an appointment to a position at a different classification level ~~shall continue~~ so long as while to have status at the former classification level the employee remains continuously employed in the classified service.

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*[End of Chapter 3]*





# Chapter 4:

# CLASSIFICATION RULES

## 4-1 POSITION ESTABLISHMENT AND CLASSIFICATION

### 4-1.1 REQUIREMENT

All positions must be established in the classified service ~~unless except where~~ specifically exempted or excepted by article 11, section 5, of the constitution, or ~~by~~ these rules.

### 4-1.2 ~~ALLOCATION~~ CLASSIFICATION

~~All positions established in the classified service shall must be reviewed to classify the position properly for purposes of determining their appropriate allocations~~ classifications.

### 4-1.3 AUTHORITY TO ESTABLISH

The appointing authority may establish a position for reasons of administrative efficiency. An ~~No~~ appointment ~~shall cannot~~ be made to any position until ~~that position~~ it has been established and ~~allocated~~ classified.

### 4-1.4 CLASSIFICATION PLAN

The commission shall authorize an official classification plan for all positions in the classified service. ~~which shall be administered by~~ The department of civil service shall administer the official classification plan.

(a) **Allocation** ~~Classification~~. Every position established ~~shall must~~ be ~~allocated~~ classified in accordance with the official classification plan.

(b) **Reclassification**. The department of civil service may reclassify an employee if the employee's position has experienced gradual growth and accretion of higher level duties and responsibilities. The appointing authority must certify that the employee is satisfactorily performing the duties of the position.

(c) **Predetermined classes** ~~classification and classification levels~~. ~~An~~ Appointing authorities may establish positions in predetermined ~~classes~~ classifications and classification levels in accordance with the regulations. ~~issued by the state personnel director governing preauthorized positions.~~

~~(e)~~**(d) Selective Certification Position Requirements.** If the department of civil service has established selective ~~certification~~ position requirements for a position, the appointing authority shall appoint only a candidate who meets the selective ~~certification~~ position requirements.

#### 4-1.5 EFFECTIVE DATE OF ESTABLISHMENT

Positions ~~will be~~ are established and ~~allocated~~ classified on a current basis.

#### ~~4-1.6~~REGULATIONS

~~The state personnel director shall issue any regulations necessary to implement the provisions of this chapter.~~

## 4-2 REVIEW

### 4-2.1 POSITION ~~ALLOCATION~~ CLASSIFICATION REVIEW

The department of civil service ~~will~~ shall provide for both a periodic and ongoing review of positions in the classified service ~~for the purpose of reviewing the allocations~~ classifications of ~~positions to ensure they~~ positions continue to be properly classified.

**(a) Position review.** ~~An~~ Appointing authorities shall give notice to the department of civil service of material changes in the duties and responsibilities that may impact the proper classification of ~~any a position, s within their jurisdiction.~~ If the appointing authority does not fail to so notify the department of civil service of material changes, the employee occupying the position may initiate a position review by filing an updated position description and a written request with the department of civil service, ~~to initiate the process for a position review.~~

**(b) Frequency of review.** ~~The classification of A~~an occupied position may be reviewed ~~for allocation classification~~ once in any ~~twelve~~ 12-month period, unless otherwise approved by the state personnel director. When a significant, substantial, or material change has occurred in the duties and responsibilities, the department of civil service may require the appointing authority to establish a new position that is properly classified. ~~establishment may be required.~~ The ~~allocation classification~~ of a position or appointment of an incumbent to a position constitutes a position review for the purposes of this rule.

**(c) Effective date of change.** ~~Any~~ change in the ~~allocation classification~~ of a position based on a review under this rule ~~shall be~~ is on a current basis, except as otherwise approved by the state personnel director.

**(d) Preauthorized review.** ~~An~~ Appointing authorities may ~~reallocate-reclassify~~ a positions in accordance with regulations ~~issued by the state personnel director governing~~ preauthorized positions.

## 4-3 APPEALS: ~~CONDITIONS~~

### ~~4-3.1 AUTHORIZED~~

Only the appointing authority may appeal the ~~allocation~~classification of a newly established position. ~~Both~~Either the appointing authority ~~and or an~~ the adversely affected incumbent may appeal a change in the ~~allocation~~classification ~~and/or classification level~~ of a previously established position. ~~The appeal shall be made through authorized~~ technical appeal procedures.

## 4-4 POSITION ABOLISHMENT

### 4-4.1 AUTHORITY TO ABOLISH

The appointing authority may abolish a position for reasons of administrative efficiency, including, for example, lack of work, lack of adequate funding, change in departmental mission, or reorganization of the work force.

### 4-4.2 RESCINDING OF ~~ALLOCATION~~CLASSIFICATION

~~Any permanent~~ position that remains vacant for six (6) months ~~shall normally~~ may have its approved ~~allocation~~classification rescinded. ~~Any seasonal or intermittent position that remains vacant for more than one (1) year shall have its approved allocation rescinded.~~

### 4-4.3 NOTICE

The department of civil service shall notify each appointing authority of any rescinded ~~allocation~~classification.

## 4-5 WORKING OUT OF CLASS

### 4-5.1 TEMPORARY ASSIGNMENT

In accordance with civil service rules and regulations, ~~An~~ appointing authority may temporarily assign an employee to perform duties and responsibilities of another ~~class~~classification appropriately classified by the department of civil service. ~~In such instances the state personnel director will allocate such duties and responsibilities.~~ Benefits accruing to ~~the an~~ employee by that in a temporary assignment ~~will be~~ in accordance with such ~~allocation~~classification.

**(a) Exception.** Provisions of this rule ~~4-5.1 shall do not~~ apply to the following employees:

- (1) An employee working in a preauthorized ~~or pattern~~ positions;

~~(2) to~~ An employees in a positions downgraded for training.

~~(3) , to~~ An employees occupying a positions that ~~are reallocable~~ is reclassifiable.

~~(4) , or to~~ An overall assistants who normally substitutes for their employee's supervisors.

**(b) Filing of claims.** A claim for working out of class ~~should~~ shall must be presented ~~at the time of occurrence, but no later than twenty (20) workdays after from the discontinuance of the working-out-of-class assignment has been discontinued, that caused the claim to be generated.~~ Retroactivity of any claim is governed by the time limits set forth under these rules and applicable regulations.

**NOTE 9:** Rule 4-6, Disbursements for Personal Services, has been relocated to Chapter 7.

## 4-6 SENIOR EXECUTIVE SERVICE

### 4-6.1 DEFINED

The senior executive service (SES) ~~shall~~ consists of the highest level classified positions in which the incumbents typically (1) report directly to state department directors, or boards and commissions heading principal departments, (2) formulate and implement major policy, or (3) influence major programs and policies relating to the critical mission of each state department.

### 4-6.2 CONDITIONS OF EMPLOYMENT

**(a) Performance pay.** All positions in the senior executive service are included in a performance-pay program.

**(b) Qualifications; limited appointment.** A ~~P~~positions in the senior executive service ~~shall~~ must be filled by a qualified person ~~s pursuant to under~~ a senior executive service agreement approved by the state personnel director. The agreement ~~shall must~~ provide for a limited-term appointment, the duration of which ~~may cannot~~ may cannot exceed ~~two~~ two years.

**(c) Transfers and reassignments.** An ~~I~~ncumbents in a senior executive service positions may be reassigned to ~~any other senior executive service position within their incumbent's principal department at their incumbent's level classification, and for which they are qualified.~~ A reassignment ~~shall cannot~~ be grieved ~~able~~ unless the reassignment violates rule ~~1-71-2.~~ An ~~I~~ncumbents may also be transferred to another senior executive service position outside their principal department with the consent of the senior executive.

**(d) Removal during term.** During the term of an appointment and ~~prior to before~~ the expiration of the term of appointment, an incumbent may be removed only (1) for cause, including unsatisfactory performance, or (2) if the position is abolished. A senior

executive dismissed before the expiration of the term of appointment may appeal the dismissal through the civil service grievance and appeals procedure. However, no damages may be awarded for any period after the date of expiration of the term of appointment.

**(e) Reappointment.**

**(1) No right to reappointment.** An appointee to the senior executive service has no expectation in, or right to, a reappointment at the expiration of ~~the original term of~~ an appointment. There is no requirement that a department provide any reason or justification for not reappointing a person to a further term in the senior executive service. Reappointment is solely within the discretion of the appointing authority. No action by an appointing authority may create an expectation in, or right to, reappointment.

**(2) Time limits.** If an appointing authority reappoints an incumbent senior executive, the appointing authority and the senior executive shall execute a new senior executive agreement to take effect at the expiration of the original appointment, subject to the approval of the state personnel director. A senior executive agreement ~~shall cannot~~ be executed more than ~~six~~ 6 months before the earliest effective date of the appointment. Any senior executive agreement executed more than ~~six~~ 6 months before the effective date of the appointment is void and ~~may cannot~~ be enforced. Any senior executive agreement ~~which that~~ purports to be effective for more than ~~two~~ 2 years is void and ~~may cannot~~ be enforced.

**(3) Continuation in position not effective.** A person ~~may cannot~~ continue in a senior executive service position without a valid appointment agreement. ~~No e~~Continuation in a senior executive service position without a valid appointment agreement approved by the state personnel director, with or without the consent of the appointing authority, ~~may cannot~~ create an enforceable appointment.

**(f) Exemptions.** An employee occupying a senior executive service position ~~shall cannot~~ be displaced by another employee exercising employment preference.

**(g) Termination of appointment.** ~~When~~ (1) the parties mutually agree to terminate a senior executive service agreement, ~~when~~ (2) ~~an SES~~ the position is abolished, or ~~when~~ (3) the term of appointment expires, the ~~terminating~~ employee's future status ~~shall be~~ is established according to the following provisions:

**(1) Employee with prior status.** If the employee had continuing status at the time of appointment to the senior executive service, the ~~two~~ following options are available:

**(A) Employment preference.** The employee may return to a position in accordance with and subject to the civil service rules and regulations governing employment preference in effect at the time the employment preference is exercised. If the employee is required to return to a position at a lower ~~level~~ classification than held at the time of appointment to the senior executive

service, the employee may later be reassigned to any position in the ~~state~~ classified service, not exceeding the ~~level classification~~ held at the time of appointment to the senior executive service, for which the employee is otherwise qualified. Such a reassignment requires the approval of the employee, the appointing authority, and the state personnel director.

**(B) Approved placement.** The employee and the appointing authority may, with the consent of the state personnel director, mutually agree upon an appropriate placement.

**(2) Pay protection.** If ~~either an option in subsection (1) is exercised~~, the employee shall return to a position with a base salary not less than the base salary of the employee immediately before entry into the senior executive service. The state personnel director shall approve a base salary for the employee which is equal to the base ~~pay salary~~ of the employee before appointment to the senior executive service, adjusted for any general salary increases approved during the period of appointment to the senior executive service. This pay protection ~~shall expire at such time as~~ when the employee accepts a position with a base salary exceeding the protected base salary received upon return from the senior executive service or at such other time as provided in the regulations.

**(3) Employee with no prior status.** If the employee had no continuous status in the classified service at the time of appointment to the senior executive service, the appointing authority shall ~~employee shall be terminated separate the employee from the classified service, state employment,~~ unless otherwise properly appointed to another position.

**(4) Termination for cause.** Notwithstanding any other provision to the contrary, if an appointee to senior executive service is terminated for cause during the term of appointment, the appointing authority shall ~~employee shall be terminated separate the employee from state employment the classified service,~~ irrespective of any status at the time of appointment or fall-back agreement.

#### 4-6.3 SENIOR EXECUTIVE SERVICE AGREEMENT

**(a) Agreement.** No person ~~shall can~~ be appointed to a senior executive position except as provided by this rule and the regulations and unless the person executes a senior executive service agreement in a form authorized by the state personnel director. ~~No employee of a~~ An appointing authority is not authorized to vary the ~~terms fixed provisions~~ on any senior executive service agreement form approved by the state personnel director.

**(b) Minimum provisions.** The senior executive service agreement ~~shall~~ must include ~~contain~~ the following minimum provisions:

**(1)** The term of the appointment ~~shall cannot~~ exceed ~~two~~ 2 years.

**(2)** The agreement ~~shall~~ automatically expires at the end of the term.

(3) The incumbent agrees that the appointing authority is under no obligation, implicit or explicit, to offer the incumbent a new senior executive service agreement at the expiration of the term. The appointing authority may decline to offer the incumbent a new senior executive service agreement for any reason or for no reason. However, an appointing authority is prohibited from discriminating against any candidate or incumbent regarding appointment or compensation, as provided in rule ~~1-7-1-2~~.

(4) Appointment to the senior executive service ~~shall does~~ not result in any employment preference or other right to continued employment with the state. A person appointed to the senior executive service who did not have continuing status in the state classified service at the time of appointment to the senior executive service does not acquire ~~shall not have~~ any employment preference rights, fall-back rights, or other rights to continued employment with the state at the expiration of the term of appointment.

(5) If the person appointed to the senior executive service has continuing status in the classified service at the time of appointment to the senior executive service, the employee ~~shall have~~ has the rights and options to retain a position in the classified service in accordance with, and subject to, the civil service rules and regulations in effect at the time of the expiration of the appointment.

(6) ~~Such~~ Any other provisions ~~as required by~~ the state personnel director, ~~may require~~.

#### 4-6.4 TRANSITIONAL PROVISIONS

(a) **Abolition of classified executive service.** Effective January 31, 1994, the civil service commission abolished the classified executive service and regulations. Effective on that same date, all positions in the classified executive service were reclassified ~~allocated~~ as provided in the amendments to the compensation plan.

(b) **Protection of contractual rights.** All rights ~~which that~~ accrued to any incumbent member of the classified executive service prior to November 28, 1993, as a result of a specifically negotiated and written contractual provision which established particular fall-back rights for the employee, ~~shall be~~ are enforceable by the employee in the classified position to which the employee's classified executive position is ~~reallocated~~ reclassified. ~~No~~ Any rights ~~shall be~~ are not enforceable if the employee takes another position in or out of the senior executive service.

(c) **Frozen SES-eligible position.** ~~Automatic conversion of positions to the SES.~~ A ~~Positions~~ position that meets the criteria set forth in this procedure for inclusion in the senior executive service ~~shall be~~ is designated by the department as an SES-eligible position. An SES-eligible position ~~shall remain~~ remains a ~~restricted frozen~~ position until the ~~occurrence of the earliest of the following:~~ (1) it becomes vacant or (2) the incumbent executes an agreement converting the position to the senior executive service and accepts the position.

~~The incumbent in the SES-eligible position executes an agreement to convert the SES-eligible position to the senior executive service and to accept the position in the senior executive service.~~

~~The SES-eligible position becomes vacant.~~

**(d) Automatic conversion to SES.** Upon an occurrence provided in subsection (c) above, the SES-eligible position ~~shall~~ automatically ceases to be a ~~restricted frozen~~ classified position and ~~shall~~ becomes a classified position in the senior executive service. Any appointment to the position thereafter ~~shall only~~ must be made in conformity with these rules and the regulations. A ~~No~~ position converting to the senior executive service ~~shall~~ cannot be reclassified outside the senior executive service except upon approval of the state personnel director.

**(e) Treatment of incumbents.** Incumbents in SES-eligible positions as of the effective date of the abolition of the classified executive service ~~shall~~ continue in their status during any continuous appointment in a ~~restricted frozen~~, SES-eligible position, subject to all ~~applicable civil service rules, and regulations, and procedures of the classified service.~~ An SES-eligible position, and the incumbent occupying an SES-eligible position, are subject to this rule only insofar as the rule (1) applies to conversion of the SES-eligible position to the senior executive service or (2) modifies any other civil service rule or regulation applicable to the classified service. An incumbent may, but is not required to, execute a senior executive service agreement for the SES-eligible position ~~which that~~ the incumbent occupies.

#### ~~4-6.5 REGULATIONS DESIGNATION OF POSITIONS~~

~~The state personnel director shall issue regulations to implement this rule. The director is authorized to designate the classified positions to be included in the senior executive service.~~

## 4-7 SENIOR EXECUTIVE MANAGEMENT ASSISTANT SERVICE (SEMAS)

### 4-7.1 ~~AUTHORIZED; DEFINED~~

~~A senior executive management assistant service (SEMAS) is authorized.~~

**(a) Scope.** The senior executive management assistant service (SEMAS) ~~shall~~ consists of senior executive management assistant positions that report to members of policy-making boards and commissions, department directors, members of the senior executive service, and other equivalent unclassified positions. Incumbents in these positions perform administrative support, management assistant, and related executive support activities. ~~to assist senior state executives and their affiliated committees involved in the management of state.~~

**(b) Features.** The features of the senior executive management assistant service include the following key elements:



~~(1) Selection is based on competitive examination and performance exclusively on the basis of merit, fitness, and efficiency, without regard to racial, religious, or partisan or other prohibited discriminatory considerations.~~

~~(2) Appointment is limited to a term not to exceed two years, but senior executive management assistants may be reappointed to additional terms.~~

~~(3) Compensation includes fixed salary plus variable pay linked to performance, measured against standards approved by the state personnel director.~~

~~(4) Senior executive management assistants appointed from within the classified service will retain their employment preference rights, unless dismissed for cause. Senior executive management assistants appointed from outside the classified service will not have employment preference rights.~~

~~(5) Removal during the term of an appointment will be limited to (1) just cause, including unsatisfactory performance, and (2) abolition of the position. Termination at the end of the term is automatic unless the incumbent is reappointed by the department director.~~

~~(e) Purpose. The senior executive management assistant service is designed to meet the following principal objectives:~~

~~(1) To give senior executives the flexibility to create an accountable and responsive executive staff dedicated to achieving department objectives.~~

~~—The limited term appointments make it possible for the senior executive to change the senior executive management assistant staff over a two-year period to meet changing department needs. The variable pay linked to performance permits incentives to encourage outstanding performance and to reward success.~~

~~(2) To attract advanced level executive support experience and expertise from members of the career classified work force.~~

~~—When senior executives want to make use of the experience and expertise within the ranks of the classified service, persons already in the classified service may be appointed to classified senior executive management assistant positions without losing their employment preference rights. Thus, such persons will retain those rights to return to other classified positions at the expiration of their terms as senior executive management assistants.~~

~~(3) To attract advanced level executive support experience and expertise from outside the classified service.~~

~~—When senior executives want to make use of experience and expertise from persons outside the classified service, qualified outside persons may be appointed to senior executive management assistant positions. However, such appointments carry no rights to remain in the classified service at the expiration of their terms.~~

~~(4) To ensure that senior executive management assistants are selected exclusively on the basis of merit, fitness, and efficiency, without regard to racial, religious, partisan, or other prohibited discriminatory considerations.~~

~~— All persons appointed to the senior executive management assistant service must be certified as eligible by the department of civil service. The fact that appointments to the senior executive management assistant service are limited term appointments may not be used to subvert the non-discriminatory and non-partisan mandates of the constitution and civil service rules. However, the senior executive management assistant service recognizes that new senior executives, independent of any change in the governor's office, often have no flexibility to create a responsive and cohesive senior management team. As a complement to the senior executive service, the senior executive management assistant service provides considerable, but not unlimited, flexibility to help achieve that goal.~~

#### ~~4-9.2 REGULATIONS~~

~~A person who accepts appointment to a position in the senior executive management assistant service shall do so in accordance with this rule 2-26 and regulations issued by the state personnel director. The director is authorized to designate the classified positions to be included in the senior executive management assistant service.~~

#### ~~4-9.3 POSITIONS IN THE SEMAS~~

~~The department of civil service shall approve establishment of positions in the senior executive management assistant service.~~

~~(a) Criteria. A position must meet the following criteria to be included in the senior executive management assistant service:~~

~~(1) The primary duty of the position must be direct support of executive functions. The position plays a significant role in executive support activities to assist state executives involved in the formulation and implementation of operational policy.~~

~~(2) The position must report directly to a department director, a policy-making board or commission, a person in the senior executive service, or any equivalent excepted or exempt position.~~

~~(3) A position classified in the senior executive management assistant service shall not be removed or substantively replaced by another position created in the classified service outside of the SEMAS unless approved by the state personnel director.~~

~~(b) Initial Identification of Positions. Each appointing authority shall immediately review positions in light of these criteria. Within ninety (90) days after the effective date this rule 2-26, each appointing authority shall identify in writing to the department of civil service each position which meets the criteria for inclusion in the senior executive management assistant service. Within thirty (30) days after receiving the initial appointing authority~~

list, the department of civil service shall authorize each position eligible to be included in the senior executive management assistant service.

~~(e) **Classification Plan.** The civil service commission shall approve the classification and pay structure for the senior executive management assistant service.~~

#### ~~4-9.5 PERFORMANCE EVALUATION SYSTEM~~

~~Each appointing authority shall establish standards against which the performance of incumbents in the senior executive management assistant service shall be measured. The state personnel director shall review and approve the standards. The standards shall be based on merit, efficiency, fitness, and effectiveness. The evaluation shall take into account such factors as:~~

~~(a) Improvements in efficiency, productivity, and quality of work or service.~~

~~(b) Cost efficiency.~~

~~(c) Timeliness of performance.~~

~~(d) Other business-related indications of effectiveness, productivity, and performance quality.~~

~~Performance appraisals shall be one factor used by the appointing authority in determining eligibility for salary adjustments and performance pay awards. Variable pay awards are discretionary. Performance appraisals may be used in other human resource decisions, such as promotion, retention, assignment, need for training, and the like. Performance appraisal and salary review shall be conducted at least annually for each senior executive management assistant.~~

#### 4-7.2 CONDITIONS OF EMPLOYMENT

(a) **Performance pay.** All positions in the senior executive management assistant service are included in a performance-pay program.

(b) **Qualifications; Limited appointment.** Each A position in the senior executive management assistant service shall must be filled by a qualified persons ~~under these procedures pursuant to~~ under a senior executive management assistant service agreement (SEMAS agreement) approved by the state personnel director. The agreement ~~shall~~ must provide for a limited-term appointment, the duration of which ~~may~~ cannot exceed ~~two~~ 2 years.

(c) **Transfers and reassignments.** An incumbent in a senior executive management assistant position may be reassigned to any other senior executive management assistant position within the incumbent's same principal department at the incumbent's current level ~~classification for which qualified~~. A reassignment ~~shall~~ cannot be grieved ~~able~~ unless the reassignment violates ~~except under commission rule 1-74-2~~. An incumbent may also be transferred to another senior executive management assistant position ~~in a different~~ outside their principal department with the consent of the incumbent.

**(d) Removal during term.** During the term of appointment and ~~prior to~~ before the expiration of the term of appointment, an incumbent may be removed only (1) for cause, including unsatisfactory performance, or (2) if the position is abolished. A senior executive management assistant dismissed before the expiration of the term of appointment may appeal the dismissal through the civil service grievance and appeals procedure. However, no damages may be awarded for any period after the date of expiration of the term of appointment.

**(e) Reappointment.**

**(1) No right to reappointment.** An appointee to the senior executive management assistant service has no expectation in, or right to, a reappointment at the expiration of an appointment. There is no requirement that a department provide any reason or justification for not reappointing a person to a further term in the senior executive management assistant service. Reappointment is solely within the discretion of the appointing authority. No action by an appointing authority may create an expectation of, or right to, reappointment.

**(2) Time limits.** If an appointing authority reappoints an incumbent senior executive management assistant, the appointing authority and the senior executive management assistant shall execute a new senior executive management assistant service agreement to take effect at the expiration of the original appointment, subject to the approval of the state personnel director. A senior executive management assistant service agreement ~~shall cannot~~ be executed more than ~~six 6~~ months before the earliest effective date of the appointment. Any senior executive management assistant service agreement executed more than ~~six 6~~ months before the effective date of the appointment is void and ~~may cannot~~ be enforced. Any senior executive management assistant service agreement which purports to be effective for more than ~~two 2~~ years is void and ~~may cannot~~ be enforced.

**(3) Continuation in position not effective.** A person ~~may cannot~~ continue in a senior executive management assistant position without a valid appointment agreement. ~~No~~ Continuation in a senior executive management assistant position without a valid appointment agreement approved by the state personnel director, with or without the consent of the appointing authority, ~~may cannot~~ create an enforceable appointment.

**(f) Exemptions.** ~~An employee occupying a Ssenior executive management assistant service positions cannot be displaced by another employee exercising are exempt from all employment preference, and bumping provisions, except as specifically provided in this rule or in the regulations.~~

**(g) Termination of appointment.** When (1) the parties mutually agree to terminate a senior executive management assistant service agreement, ~~or when (2) the position is abolished,~~ or ~~when (3) the term of appointment expires,~~ the employee's future status ~~shall be~~ is established according to the following provisions:

1 **(1) Employee with prior status.** If the employee had continuing status at the time of  
2 appointment to the senior executive management assistant service, the following  
3 options are available.

4 **(A) Employment preference.** The employee may return to a position ~~at the~~  
5 ~~employee's classification and level at the time the employee was appointed to~~  
6 ~~the senior executive management assistant service,~~ in accordance with and  
7 subject to the civil service rules and regulations governing employment  
8 preference in effect at the time the employment preference is exercised. If the  
9 employee is required to return to a position at a lower ~~level~~ classification than  
10 held at the time of appointment to the senior executive management assistant  
11 service, the employee may later be reassigned to any position in the state  
12 classified service, not exceeding the classification level held at the time of  
13 appointment to the senior executive management assistant service, for which the  
14 employee is otherwise qualified. Such a reassignment requires the approval of  
15 the employee, the appointing authority, and the state personnel director.

16 **(B) ~~Approved Placement~~placement.** The employee and the appointing authority  
17 may, with the consent of the state personnel director, mutually agree upon an  
18 appropriate placement.

19 **(2) Pay protection.** If ~~either an option in subsection (g)(1) is exercised,~~ the employee  
20 ~~shall return~~ to a position with a base salary not less than the base salary of the  
21 employee immediately before entry into the senior executive management assistant  
22 service. The state personnel director shall approve a base salary for the employee  
23 which is equal to the base salary of the employee before appointment to the senior  
24 executive management assistant service, adjusted for any general salary increases  
25 approved during the period of appointment to the senior executive management  
26 assistant service. This pay protection ~~shall expire at such time as when~~ the  
27 employee accepts a position with a base salary exceeding the protected base salary  
28 received upon return from the senior executive management assistant service or at  
29 such other time as provided in the regulations.

30 **(3) Employee with no prior status.** If the employee ~~had~~ no continuous status in the  
31 classified service at the time of appointment to the senior executive management  
32 assistant service, the appointing authority employee shall be terminated separate the  
33 employee from state employment the classified service, unless otherwise properly  
34 appointed to another position.

35 **(4) Termination for cause.** Notwithstanding any other provision to the contrary, if an  
36 appointee to the senior executive management assistant service is terminated for  
37 cause during the term of appointment, the employee shall be terminated from state  
38 employment, irrespective of any status at the time of appointment or fall-back  
39 agreement.

#### 4-7.3 SEMAS AGREEMENT

**(a) Agreement.** No person shall be appointed to a senior executive management assistant position unless the person executes a senior executive management assistant service agreement in a form authorized by the state personnel director. An appointing authority is not authorized to vary the fixed provisions of any senior executive management assistant service agreement form.

**(b) Minimum Provisions.** The senior executive management assistant service agreement ~~shall must include~~ contain the following minimum provisions.

**(1)** The term of the appointment ~~shall cannot~~ exceed ~~two~~ 2 years.

**(2)** The agreement ~~shall~~ automatically expires at the end of the term.

**(3)** The incumbent agrees that the appointing authority is under no obligation, implicit or explicit, to offer the incumbent a new senior executive management assistant service agreement at the expiration of the term. The appointing authority may decline to offer the incumbent a new senior executive management assistant service agreement for any reason or for no reason. However, an appointing authority is prohibited from discriminating against any candidate or incumbent regarding appointment or compensation, as provided in ~~commission~~ rule 1-71-2.

**(4)** Appointment to the senior executive management assistant service ~~shall does not~~ result in any employment preference or other right to continued employment with the state. A person appointed to the senior executive management assistant service who did not have continuing status in the state classified service at the time of appointment to the senior executive management assistant service does not acquire ~~shall not have~~ any employment preference rights, fall-back rights, or other rights to continued employment with the state at the expiration of the term of appointment.

**(5)** If the person appointed to the senior executive management assistant service has continuing status in the classified service at the time of appointment to the senior executive management assistant service, the employee ~~shall have~~ the rights and options to retain a position in the classified service in accordance with, and subject to, the civil service rules and regulations in effect at the time of the expiration of the appointment.

**(6)** ~~Such~~ Any other provisions required by as the state personnel director, ~~may require~~.

#### 4-7.4 TRANSITIONAL PROVISIONS

**(a) ~~Automatic conversion of positions~~ Frozen SEMAS-eligible position.** A position that meets the criteria ~~set forth in this rule~~ for inclusion in the senior executive management assistant service ~~shall be is~~ designated by the department of civil service as a “*SEMAS-eligible position*.” A SEMAS-eligible position ~~shall remains a restricted frozen position until the occurrence of the earliest of the following:~~ (1) it becomes vacant or (2) the

incumbent executes an agreement converting the position to the senior executive management assistant service and accepts the position.

~~The incumbent in the SEMAS-eligible position executes an agreement to convert the SEMAS-eligible position to the senior executive management assistant service and to accept the position in the senior executive management assistant service.~~

~~The SEMAS-eligible position becomes vacant.~~

**(b) — Conversion of SEMAS-eligible positions.** Upon an occurrence provided in subsection (a) ~~above~~, the SEMAS-eligible position ~~shall~~ automatically ceases to be a ~~restricted-frozen~~ classified position and ~~shall~~ becomes a classified position in the senior executive management assistant service. Any appointment to the position thereafter shall only be made in conformity with the ~~se~~ civil service rules and ~~applicable~~ regulations. No position converting to the senior executive management assistant service shall be reclassified outside the senior executive management assistant service.

**(b) Treatment of Incumbents.** Incumbents in SEMAS-eligible positions as of the effective date of the creation of the classified executive management assistant service ~~shall~~ continue in their status during any continuous appointment in a ~~restricted-frozen~~, SEMAS-eligible position, subject to all the applicable civil service rules, ~~and~~ regulations, ~~and~~ ~~procedures of the classified service.~~ A SEMAS-eligible position and the incumbent occupying a SEMAS-eligible position are subject to this rule ~~2-26~~ only insofar as this rule (1) applies to conversion of the SEMAS-eligible position to the senior executive management assistant service or (2) modifies any other applicable rule, regulation, or procedure applicable to the classified service. An incumbent may, but is not required to, execute a senior executive management assistant service agreement for the SEMAS-eligible position ~~which~~ that the incumbent occupies.

#### **DESIGNATION OF POSITIONS**

~~The state personnel director is authorized to designate the classified positions to be included in the senior executive management assistant service.~~

#### **4-9.8 EFFECTIVE DATE**

~~The effective date of this rule [2-26] shall be April 22, 1997.~~

## **4-8      EQUITABLE CLASSIFICATION PLAN GROUP 4**

### **4-8.1          ECP GROUP 4 DEFINED**

Group 4 of the Equitable Classification Plan (ECP) is that part of the classified service which includes the second highest tier of classified management positions that administer programs within a state agency. Incumbents in these positions play an integral role in the management of state services; ~~with responsibility for planning, directing, and administering designated~~

programs at the division, office, or bureau levels and are accountable for attaining program objectives. ~~The incumbents in Group 4~~ Incumbents typically (1) report directly to senior executive service positions or other higher level Group-4 executives; (2) recommend, develop, or implement agency policies governing high-level programs; (3) define program objectives, staffing, and organization at the division, office, or bureau levels; (4) coordinate the efforts of designated organizational components; and (5) evaluate the performance of subordinates who manage or directly work under their control. These positions are typically restricted to division directors, office heads, ~~directors~~, bureau chiefs, ~~directors~~, their deputies, and to other positions that are organizationally or functionally equivalent.

#### 4-8.2 CONDITIONS OF EMPLOYMENT IN GROUP 4

**(a) Performance pay.** All positions in ECP Group 4 are included in a performance-pay program.

**(b) General.** Positions in Group 4 are subject to the civil service rules and regulations applicable to nonexclusively represented employees, except as specifically modified for Group-4 positions.

**(c) Transfers and reassignments.** An incumbent in a Group-4 position may be reassigned to any other Group-4 position within the employee's principal department at the same classification or another classification at the same classification level, as authorized by civil service rule 3-3.7.3-4.6. A reassignment ~~shall not be grievable except~~ is grievable only if it violates ~~under~~ civil service rule 1-7-1-2. An incumbent may also be transferred to another Group-4 position outside the employee's principal department, at a classification level equal to or lower than the classification level at which the employee has status, with the consent of the employee. These actions must comply with applicable appointment rules and regulations.

**(d) Protection from employment preference.** An employee occupying a position in Group 4 ~~shall cannot~~ be displaced by another employee exercising employment preference.

**(e) Abolishment.** When a Group-4 position is abolished, the incumbent may exercise employment preference in accordance with and subject to the civil service rules and regulations governing employment preference in effect at the time the employment preference is exercised.

**(f) Base salary and pay protection.** The base salary rate after an employee exercises employment preference ~~shall be~~ is determined in accordance with the compensation plan, unless the employee is eligible for pay protection as provided in this subsection.

**(1) Eligibility for pay protection.** When an employee in Group 4 exercises employment preference rights and the employee's new base salary rate would be less than the base salary rate the employee received immediately prior to the employee's initial Group-4 appointment, adjusted for any general salary increases during the period of appointment in Group 4, the employee is eligible for pay protection, ~~and shall be paid in accordance with the provisions of subsections (2), (3), and (4).~~ If the employee



had no continuous status in the classified service at the time of appointment to Group 4, the employee is not eligible for pay protection.

**(2) Pay protection plan.** An eligible employee's protected base salary rate ~~shall be~~ is equal to the employee's base salary rate immediately prior to entry into Group 4, adjusted for any general salary increases approved during the period of appointment in Group 4.

**(3) Expiration of pay protection.** The pay protection received by an eligible employee ~~shall expire~~ on the first occurrence of any ~~one~~ of the following:

**(A)** The employee accepts a position with a base salary rate equal to or exceeding the protected base salary rate.

**(B)** The employee accepts a transfer to another position, ~~as authorized in rule 3-4.5,~~ unless the appointing authority agrees to continuation of the pay protection in the new position.

**(C)** The employee accepts a reassignment to a position in another principal department or autonomous agency, ~~as authorized in rule 3-4.6(a),~~ unless the appointing authority agrees to continuation of the pay protection in the new position.

**(D)** The employee is demoted for unsatisfactory performance, ~~as authorized in rule 2-9.2(a).~~

**(E)** The employee is demoted at the request of the employee, ~~as authorized in rule 2-9.2(e).~~

**(F)** The employee is separated from the classified service for any reason, including, but not limited to, dismissal, voluntary quit, retirement, lay-off, or waived rights leave of absence, ~~without pay.~~

**(G)** The employee accepts an appointment to an exempt or excepted position, ~~as authorized by rule 2-3.~~

**(4) Continuation of pay protection.** An employee with pay protection may continue to receive pay protection in a new position in any of the following circumstances:

**(A)** The employee accepts a promotion to a position within any department with a base salary rate lower than the protected base salary rate.

**(B)** The employee is reassigned to another position in the employee's principal department or autonomous agency, ~~as authorized by rule 3-4.6.~~

**(C)** The employee is involuntarily demoted under any of the circumstances authorized in rule 3-3.3(b)(2), (4), (5), or (6). ~~2-9.2(b), (d), (e), or (f).~~

#### 4-7.3 REGULATIONS DESIGNATION OF POSITIONS

~~The state personnel director shall issue regulations to implement this rule. The state personnel director is authorized to designate the classified positions to be included in ECP Group 4.~~

### 4-9      EQUITABLE CLASSIFICATION PLAN (ECP) GROUPS 1, 2, AND 3

#### 4-8.14-9.1      ECP GROUP 1 DEFINED

Group 1 of the Equitable Classification Plan (ECP) is that part of the classified service which includes nonsupervisory classifications that typically require less than a bachelor's degree for entry. Incumbents in these positions typically provide technical, office, paraprofessional, and other services that do not require a four-year degree. They are accountable for attaining program objectives and have responsibility for assigned functions, duties, and processes. They typically report directly to Group-3 supervisors but may report to Group-4 executives and other top-level officials. These positions are usually located within a program, section, or unit.

#### 4-9.2      ECP GROUP 2 DEFINED

Group 2 of the Equitable Classification Plan (ECP) is that part of the classified service which includes nonsupervisory classifications that typically require a bachelor's degree or higher, or an equivalent combination of education and experience, for entry. Incumbents in these positions are accountable for attaining program objectives and typically provide professional services, with responsibility for assigned functions, duties, and processes. They typically report directly to Group-3 managers but may report to Group-4 executives and other top-level officials. These positions are usually located within a program, section, or unit.

#### 4-9.3      ECP GROUP 3 DEFINED

Group 3 of the Equitable Classification Plan (ECP) is that part of the classified service which includes the managerial and supervisory classifications that direct programs within a state agency and play an integral role in the management and supervision of state services. Incumbents in these positions are responsible for planning, directing, and administering a section or unit and are accountable for attaining program objectives by: (1) recommending, developing, or directing agency programs; (2) defining section or unit program objectives, staffing, and organization; (3) coordinating the efforts of designated organizational components; and (4) evaluating the performance of subordinates who work directly under their control. They typically report to higher level Group-3 employees or to Group-4 executives. These positions are typically limited to section heads, unit heads, and to other positions that are organizationally or functionally equivalent.

#### 4-9.4 CONDITIONS OF EMPLOYMENT IN GROUPS 1, 2, AND 3

- (a) **General.** Incumbents occupying positions in ECP Groups 1, 2, and 3 are subject to the civil service rules and regulations applicable to nonexclusively represented employees, except where a rule or regulation specifically provides otherwise.
- (b) **Transfers and reassignments.** Incumbents occupying positions in ECP Groups 1, 2, or 3 may be transferred or reassigned subject to the civil service rules and regulations governing transfer and reassignment.
- (c) **Abolishment.** When a position in Group 1, 2, or 3 is abolished, the incumbent may exercise employment preference in accordance with the civil service rules and regulations governing employment preference in effect at the time the employment preference is exercised.
- (d) **Base salary upon reduction-in-force.** The base salary rate after an employee exercises employment preference is determined in accordance with the compensation plan.
- (e) **Inclusion in a performance-pay program.**
- (1) Incumbents occupying positions in ECP Groups 1, 2, or 3 may be included in a performance-pay program. Only the state personnel director is authorized to designate positions or classifications for inclusion in a departmental performance-pay program.
  - (2) The appointing authority shall notify incumbents occupying positions in ECP Groups 1, 2, or 3 who are eligible for conversion to an approved performance management system of the details of the plan and their individual performance standards.
  - (3) Conversion to an approved performance management system is not a classification review and is not grievable or appealable.

### ~~4-9 ATTORNEYS EMPLOYED BY THE DEPARTMENT OF ATTORNEY GENERAL~~

#### ~~4-9.1 DEFINITION~~

~~For the purposes of this rule, **attorney** means an attorney employed in the classified service by the department of the attorney general.~~

#### ~~4-9.2 CONDITIONS OF EMPLOYMENT~~

- (a) **General.** ~~An attorney is subject to the civil service rules and regulations applicable to nonexclusively represented employees, except where a rule or regulation specifically provides otherwise.~~

1 **(b) Transfers and reassignments.** An attorney may be transferred or reassigned to any  
2 other position within the department of the attorney general as authorized by civil service  
3 rule 3-4.6. A reassignment shall not be grievable except under civil service rule 1-2.

4 **(c) Abolishment.** When an attorney position is abolished, the incumbent may exercise  
5 employment preference in accordance with and subject to the rules and regulations  
6 governing employment preference in effect at the time the employment preference is  
7 exercised.

8 **(d) Pay schedules.** The civil service commission shall approve a compensation schedule for  
9 each classification that is either a schedule with steps or a performance pay program.

#### 10 ~~4-9.3~~ REGULATIONS

11 The state personnel director shall issue regulations to implement this rule.  
12

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13 *[End of Chapter 4]*  
14

# Chapter 5:

## COMPENSATION AND

## FRINGE BENEFITS RULES

### ~~5-1~~ DEFINITIONS

#### ~~5-1.1~~ DEFINITIONS

~~As used in these rules:~~

**NOTE 10:** The definitions in this rule have been relocated to Chapter 8.

### ~~5-25-1~~ CIVIL SERVICE COMPENSATION PLAN

#### ~~5-2-15-1.1~~ APPLICATION AUTHORITY

**(a) General application.** All eligible employees in the classified service ~~shall receive be~~ compensation ~~ed and eligible for~~ fringe benefits in accordance with the compensation plan, except as provided in subsection (b).

**(b) Collective bargaining agreement.** All employees in the classified service ~~shall be are~~ covered by these rules, except that employees covered by an approved collective bargaining agreement differing from the compensation plan ~~shall be are~~ governed by the collective bargaining agreement, where different.

#### ~~1-1-25-1.2~~ SCHEDULE AMENDMENTS TO COMPENSATION PLAN

The civil service commission may amend the compensation ~~schedules plan at any time,~~ consistent with article 11, section 5, of the constitution ~~from time to time.~~ The state personnel director ~~shall may~~ submit to the commission ~~(1) recommended adjustments amendments to the~~ compensation rules at any time for nonexclusively represented employees ~~The director and~~ ~~(2) shall submit to the commission for review and approval (1) any wage agreements~~

~~proposed collective bargaining agreement or amendment agreed to by reached between the~~  
state employer and ~~an exclusive employee-representatives and (2) any recommendation of the~~  
coordinated compensation panel.

## 5-2 HOURS OF SERVICE

### 5-2.1 WORK PERIOD

**(a) Standard work period.** ~~The standard Eighty (80) hours of work shall constitute the~~  
biweekly work period for a full-time employees in the classified service is the equivalent  
of 80 hours of work.

**(b) Alternative work periods.** The state personnel director may issue regulations that  
establish alternative work periods and measures of equivalent full-time service. The  
regulations may conform ~~other provisions of the compensation plan to the alternative~~  
periods and measures.

### 5-2.2 SERVICE HOURS TOWARD BENEFITS

~~A Career employees in the classified service shall earn credit for hours paid in a biweekly~~  
work period for ~~the purpose of accruing fringe benefits. An employee cannot receive credit~~  
~~for Paid service in excess of eighty (80) hours in a biweekly work period, shall not be~~  
~~counted. A Noncareer employees is not eligible for fringe benefits are excluded and shall not~~  
cannot accrue credit hours toward benefits.

## ~~5-4~~ 5-3 COMPENSATION SCHEDULES ~~ADMINISTRATION~~

### 5-3.1 COMPENSATION SCHEDULES

The civil service commission shall approve compensation schedules that establish the rates of  
compensation for each class of positions in the classified service. ~~All The~~ rates of  
compensation authorized ~~shall be~~ shall be for full-time employment. Payment for part-time service  
~~shall be~~ is proportionate to the time actually worked. If a new classification is added to the  
classification plan, the state personnel director shall initially establish the rates of  
compensation for the classification. ~~pending review by the commission.~~

### 5-3.2 DEPARTMENTAL SALARY-RANGE SUBDIVISIONS

An appointing authority, with the prior written approval of the state personnel director, may  
implement departmental salary-range subdivisions within a ~~class~~ salary range. A salary-range  
subdivision ~~shall~~ must fall within the range of rates of compensation approved by the civil  
service commission for the classification. The salary-range subdivision ~~shall be~~ must be based  
on relevant, job-related departmental considerations, ~~including, for example, such as job~~

complexity, level of responsibility, market conditions, or reporting relationships. The appointing authority shall publish all approved salary-range subdivisions for its affected employees.

### 5-3.3 INDIVIDUAL COMPENSATION

The ~~state personnel director, on request of an appointing authority,~~ shall ~~fix~~ assign the individual level of compensation for each classified employee as provided in the compensation plan. The individual level of compensation ~~shall~~ must fall within the range of rates of compensation approved by the civil service commission for the employee's classification level. If the appointing authority implements an approved salary-range subdivision, the individual level of compensation of an employee subject to the subdivision ~~shall~~ must also fall within the approved departmental range of rates for the subdivision. Any exception must be approved by the state personnel director.

### 5-3.4 OPERATION OF COMPENSATION SCHEDULES

An employee in the classified service ~~shall~~ cannot be paid less than the minimum nor more than the maximum authorized of the salary range fixed by in the compensation plan, schedule for the employee's class, except when unless authorized by the state personnel director.

**(a) Initial appointment.** On initial appointment, an employee ~~shall be~~ is paid the minimum salary step in the salary range unless the. ~~An appointing authority chooses to may pay a higher initial salary as authorized in accordance with provisions contained in the compensation plan, as approved by the director.~~

**(b) Schedules with steps.** If the compensation plan creates steps in the pay range, an employee receives pay increases shall be granted to an employee in the amounts and at the intervals provided for in the compensation schedule for the specific employee's classification level. A pay increase may be granted only if the employee has a current is in satisfactory service rating standing and otherwise qualifies for the increase.

**(1) Effective date.** Any pay increase ~~shall become~~ is effective at the beginning of the first pay period after the employee becomes eligible.

**(2) Advancement.** An employee Advancesment in pay shall be by successive steps of the pay range for the employee's classification level, as provided in the compensation plan, unless a special increase is granted in accordance with provisions contained in the compensation plan.

**(3) Reduction of pay.** An appointing authority may, for cause, reduce the pay of an employee receiving more than the minimum step for the classification level.

**(4) General schedule revision.** If the compensation schedule is amended, an employee ~~shall is be~~ paid at the salary step corresponding in length of service to the step at

which that employee was being paid in the previous salary range for the classification level.

**(c) Performance-pay programs.**

**(1) Salary range.** For each class of positions in a performance-pay program, the civil service commission shall approve a salary range that includes (1) a minimum point, (2) one or more control points, and (3) a maximum point.

**(A) Minimum point.** The minimum point ~~shall be~~ is the lowest base salary payable to an employee in the classification.

**(B) Control point.** The control point ~~shall be~~ is the highest base salary payable to an employee in the classification.

**(C) Maximum point.** The maximum point ~~shall be~~ is the maximum total salary, including both base salary and any lump sum awards, payable to an employee in the classification during ~~any one~~ fiscal year.

**(2) Performance-pay awards.** If an employee's position is included in a performance-pay program, the appointing authority, with the approval of the state personnel director, may award the employee an increase in base ~~pay~~ salary or a lump sum award, or both, in accordance with the provisions of the compensation plan. If the employee's job performance is rated less than satisfactory, the appointing authority may reduce the employee's base ~~pay~~ salary in accordance with the provisions the compensation plan. The director may set limits on the amount of performance pay that may be awarded in a ~~any one~~ fiscal year.

**(3) Grievances regarding performance-pay programs.** Performance-pay awards are discretionary. An employee ~~cannot~~ is not authorized to appeal a final performance-pay grievance determination to the department of civil service unless an appeal is specifically permitted in this rule or the applicable regulations.

**(A) Grievance and appeal permitted.** An employee aggrieved by any of the following performance-pay actions ~~is authorized to~~ may file a grievance and ~~to~~ appeal the final determination of the appointing authority to the department of civil service:

**(1)** The employee receives a performance rating of **less than** "meets expectations," "fully competent," or other equivalent satisfactory rating.

**(2)** The employee's pay is reduced.

**(3)** The appointing authority ~~fails to~~ does not rate the performance of the employee at least once annually.

**(4)** The performance-pay action violates article 11, section 5, of the constitution or rule 1-7.



**(B) Grievance appeal prohibited.** In all other cases, an appointing authority is permitted, but not required, to authorize an employee aggrieved by a performance-pay action to file a grievance within the department's grievance procedure. However, unless expressly authorized in subsection ~~(e)(3)(A), or (e)(3)(C)~~, the employee ~~may~~ cannot appeal a final performance-pay grievance determination of the appointing authority to the department of civil service. By way of example only, the following performance-pay actions cannot be appealed to the department of civil service:

**(1)** The amount of a performance-pay award.

**(2)** The failure to be awarded a performance-pay award.

**(3)** The distribution of a performance-pay award between a base-pay salary adjustment and a lump sum award.

**(4)** A performance evaluation rating **at or above** "meets expectations," "fully competent," or other equivalent satisfactory rating.

**(5)** The performance evaluation or performance-pay award of another employee.

**(6)** The decision to include a position into, or exclude a position from, a performance-pay program.

**(7)** The performance-pay program itself, including, for example, the performance standards, departmental evaluation methods, rating categories, and departmental salary-range subdivisions.

**Exception.** ~~Notwithstanding the limitations in subsections (e)(3)(A) and (e)(3)(B), an employee aggrieved by a performance-pay action that violates article 11, §5, of the Michigan Constitution or rule 1-2 is authorized to file a grievance and to appeal the final grievance decision of the appointing authority to the department of civil service.~~

**(d) Conversion of performance-pay schedule to step schedule.** If a classification is converted from a performance-pay schedule to a schedule with steps, an employee whose position is converted ~~shall~~ must be placed at a step at least equal to the employee's base salary under the performance-pay plan at the time of conversion in accordance with the regulations ~~issued by the state personnel director.~~

**(e) Salary rate for temporary projects.** Upon request of an appointing authority, the state personnel director may approve alternative or supplemental compensation that ~~may~~ exceeds the scheduled maximum rate of pay for an employee assigned to a temporary project. The appointing authority must receive written authorization for the project pay from the department of civil service ~~request the alternative compensation before the~~ employee is assigned to the project.

(f) ~~Salary rate for r~~Red-circled pay treatment employees. The state personnel director may authorize an employee's salary to be red-circled. An employee whose pay is red-circled continues to be paid at the employee's red-circled salary rate until the scheduled maximum salary of the employee's classification or classification level equals or exceeds the red-circled salary rate.~~If an employee is retained in a position allocated to a class having a lower pay range, the employee may be paid the existing salary until the maximum of the new class equals or exceeds the employee's existing salary rate.~~ An employee whose salary is red-circled is not eligible for any portion of a general wage adjustment that exceeds the maximum of the ~~new~~ employee's classification or classification level.

#### ~~1-1.55-3.5~~ SALARY RATE UPON CHANGE IN CLASSIFICATION, RETURN FROM LAYOFF, OR REINSTATEMENT

An employee who moves from one classification to another and who returns from layoff or is reinstated after separation ~~shall be~~ is paid in the new classification at the appropriate salary step in accordance with ~~provisions contained in~~ the compensation plan.

#### 5-3.6 PAYMENT AT DEATH OF AN EMPLOYEE

The appointing authority shall pay the final wages due a deceased employee ~~shall be paid in~~ accordance with a primary and secondary beneficiary designation filed by the employee under regulations issued by the state personnel director. In the absence of a valid beneficiary designation, payment ~~shall be~~ is made only in accordance with the instructions of ~~the~~ a court.

#### 5-3.7 COMPENSATION FROM OTHER STATE SOURCES

A classified employee who concurrently occupies more than one position in the state service ~~shall cannot~~ be credited with more than ~~eighty (80)~~ hours in pay status for any purpose, except salary. Salary ~~shall be~~ is prorated and paid by each department on the basis of time actually worked for each department in pay status.

#### 5-3.8 PILOT COMPENSATION PLANS

The civil service commission may approve pilot compensation plans for individual classifications. A pilot compensation plan may be limited to a classification or group of classifications in one or more departments or programs, upon approval of the state personnel director.

#### 5-3.9 APPROVAL AND DISAPPROVAL OF DISBURSEMENTS FOR THE CLASSIFIED PAYROLL

The state personnel director shall certify each payroll for the classified service. Payroll certification ~~shall be~~ is based on computerized payroll system edits of payroll calculations and personnel transactions and the audit of personnel transactions for compliance with civil service

rules and regulations. The director shall establish edit requirements and audit procedures. The director may delete from the payroll any item that cannot be certified under the provisions of this rule and shall give notice of such the action, together with the reason for the action, to the appointing authority concerned.

## ~~5-55-4~~ 5-55-4 ADDITIONAL COMPENSATION: OVERTIME, ETC.

### ~~5-5-15-4.1~~ 5-5-15-4.1 SPECIAL PAY APPLICATIONS ADDITIONAL COMPENSATION

An appointing authority may require an employees to work under special conditions. An eligible employee working under the following special conditions is paid the pay premiums provided in this rule in accordance with the regulations. ~~The compensation plan may authorize or require extra compensation for employees in such circumstances.~~

**(a) Special Conditions Defined.** ~~Special conditions are those different from normal working conditions, or at times different from the normal workday. Special conditions include, but are not limited to, (1) overtime, (2) on-call time, (3) special shift, (4) call back, (5) hazards, and (6) conditions of general emergency.~~

**(b) Procedure for Payment.** ~~The compensation plan shall establish eligibility for special pay premiums, the amounts and methods of compensation, and the standards and procedures for payment.~~

### ~~1-1-25-4.2~~ 1-1-25-4.2 OVERTIME

**(a) Eligibility.** The compensation schedules must identify each classification that is eligible for overtime pay. Overtime pay is paid to eligible employees for time worked in excess of 8 hours in a day and 40 hours in a week or as otherwise provided in the regulations.

**(b) Rate.** The overtime rate of pay is one and one-half times the employee's regular rate of pay, as defined in the regulations. The regulations may provide for accrual of compensatory time at the premium rate instead of an immediate cash payment.

### ~~1-1-35-4.3~~ 1-1-35-4.3 ON-CALL

**(a) Eligibility.** The compensation schedules must identify each classification that is eligible for on-call pay. On-call pay is paid to an eligible employee who is scheduled to be available to return to duty, work-ready, within a specific time.

**(b) Rate.** The on-call rate of pay is one hour of straight time pay for each 5 hours of on-call time.

#### ~~1-1.45-4.4~~ CALLBACK

**(a) Eligibility.** The compensation schedules must identify each classification that is eligible for callback pay. Callback pay is paid to an eligible employee who is not on scheduled on-call status but is called back to duty outside of normal working hours.

**(b) Rate.** Callback pay is paid at the overtime rate of pay. An eligible employee is paid for a minimum of 3 hours unless called back within 3 hours of the employee's regular starting time.

#### ~~1-1.55-4.5~~ SHIFT DIFFERENTIAL

**(a) Eligibility.** The compensation schedules must identify each classification that is eligible for shift differential premium. The shift differential premium is payable to an eligible employee for each shift in which more than 50 percent of the employee's regularly scheduled shift falls between 4:00 p.m. and 5:00 a.m.

**(b) Rate.** The shift differential premium is 5 percent of an employee's regular rate.

#### ~~1-1.65-4.6~~ EXCLUSIONS AND EXCEPTIONS

**(a) ~~e~~Exclusions for SES, and ECP Group 4, and attorneys.** An ~~E~~employees in the senior executive service, or ECP Group 4, and attorneys are is not eligible to accrue compensatory time or to receive additional compensation for (1) overtime, (2) on-call time, (3) special shift, or (4) callback. However, if ~~such an~~ employees otherwise qualify, they employee are is eligible for other hazard premium pay provided in the compensation plan.

**(b) State police high visibility patrol.** Notwithstanding the exclusion in subsection (a), a state police command officer participating in the high visibility patrol program is eligible to accrue compensatory time up to a maximum of 80 hours.

**(c) Exceptions for ECP Groups 1, 2, and 3.** The state personnel director is authorized to grant eligibility for (1) overtime, (2) on-call time, (3) special shift, or (4) callback pay to employees in ECP Groups 1, 2, and 3 who are otherwise ineligible for these special pay premiums.

### ~~5-65-5~~ ADDITIONAL COMPENSATION: PRISON EMPLOYEES

#### ~~5-6.15-5.1~~ PRISON EMPLOYEE PREMIUM

**(a) Eligibility.** An employee who meets any of the following eligibility criteria is paid a special prison premium rate:

(1) An employee assigned regular and recurring responsibility for custody or supervision of prisoners in the department of corrections.

(2) An employee in a position located at a correctional or a mental health facility who handles, on a regular and recurring basis, the personal, financial, or other matters affecting the well-being of prisoners of the department of corrections.

(3) An employee whose work location is within the security perimeter of a correctional facility or within a facility of the department of community health housing corrections prisoners, thereby placing the employee in an environment where physical confrontation could occur.

(b) **Exception.** An employee is not eligible for prison rate if the employee's classification or a predecessor classification was granted a special 5 percent increase in Part 1B of the minutes of the civil service commission meeting on December 14, 1978. The state personnel director shall list the current ineligible classifications in the regulations.

(c) **Rate.** The prison premium rate is \$0.40 an hour. The prison rate is paid for all hours in pay status, including holidays and paid leave.

#### 4-1.25-5.2 HIGH SECURITY RETENTION PREMIUM

(a) **Eligibility.** An employee who meets the following eligibility criteria is paid a high security retention premium.

(1) An employee who is classified as a Forensic Security Supervisor 11 - 14 at the department of community health center for forensic psychiatry.

(2) An employee in an eligible classification who works in an eligible facility:

(A) **Eligible classifications.** An employee in the following classifications is eligible:

(1) Corrections Security Inspector 13.

(2) Corrections Shift Supervisor 11, 12, or 13.

(3) Deputy Prison Warden 14.

(4) Assistant Resident Unit Supervisor 11.

(5) Resident Unit Manager 13, if the employee's office is in a housing unit considered a high security work unit.

(B) **Eligible facilities.** An employee in the following facilities is eligible:

(1) A correctional facility designated as level 4, 5, or 6 by the department of corrections. A level 4, 5, or 6 work unit or an administrative segregation work unit at another facility (i.e., regional, multiple, levels 3, 2, and 1) is **not** eligible.

(2) Huron Valley Center.

(3) An employee who receives the prison employee premium of \$0.40 an hour who has 2 years of continuous service, and is employed at one of the facilities listed in subsection (a)(2)(B).

(b) Rate. The high security retention premium is \$0.50 an hour. The high security retention premium of \$0.50 an hour and the prison employee premium of \$0.40 an hour cannot be paid simultaneously.

## 5-75-6 ADDITIONAL COMPENSATION: MISCELLANEOUS

### 5-7.15-6.1 HIGH STRUCTURES AND TUNNELS PREMIUM

(a) Eligibility. An employee who works (1) on a structure over 40 feet in height that requires scaffolding or safety harnesses or (2) in a pressurized tunnel is paid a hazard premium.

(b) Rate. The hazard premium is \$1.00 an hour for each hour of exposure. A minimum of 4 hours of hazard premium is paid for each day of exposure.

### 1-1.25-6.2 EXPLOSIVE MATERIALS PREMIUM

(a) Eligibility. An employee of the department of state police assigned to handle and dispose of explosives is paid an explosives premium.

(b) Rate. The explosives premium is 5 percent of base salary.

### 1-1.35-6.3 PREMIUM FOR DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES INSURANCE EXAMINERS WORKING OUT OF STATE

(a) Eligibility. An employees who (1) is employed as Insurance Examiner in the department of consumer and industry services, bureau of occupational and professional regulation, (2) is classified as Auditor 9-12, and (3) is required to work out outside of the state of Michigan for extensive periods, is paid an out-of-state location premium.

(b) Rate. The out-of-state premium is \$10.00 for each day worked out side of the state of Michigan.

### 1-1.45-6.4 PREMIUM FOR DEPARTMENT OF TREASURY AUDITORS WORKING AND RESIDING OUT OF STATE

(a) Eligibility. An auditor employed in the department of treasury whose principal work location and residence are outside of the state of Michigan is paid an out-of-state location premium.

**(b) Rate.** The state personnel director may periodically review and adjust the amount of the out-of-state location premium.

#### 5-6.5 OTHER EMPLOYEES RESIDING OUT OF STATE

**(a) Eligibility.** Other classified employees whose primary work location and residence are outside of the state of Michigan may be paid an out-of-state location premium.

**(b) Rate.** The state personnel director may authorize, periodically review, and adjust the amount of the out-of-state location premium.

#### ~~1-1.55~~ 5-6.6 STATE POLICE EMERGENCY RESPONSE COMPENSATION.

**(a) Eligibility.** A state police command officer is paid an emergency response compensation.

**(b) Rate.** The emergency response compensation is \$3.75 a day.

**(c) Effective date.** The emergency response compensation is effective October 1, 2000.

#### 5-6.7 CONSERVATION OFFICER 13 PREMIUM

An employee classified as a Conservation Officer 13 is credited with an additional 1.2 hours of straight time compensation for each biweekly pay period.

#### ~~1-1.65~~ 5-6.8 JURY DUTY

An employee summoned to jury duty or subpoenaed as a witness for the people to give testimony related to state employment is paid the difference between any jury or subpoena fee received and the employee's regular pay during the period of required attendance.

#### ~~1-1.75~~ 5-6.9 SEVERANCE PAY

##### **(a) Eligibility.**

**(1) Employees.** The following employees are eligible for severance pay if they meet the criteria in subsection (2) and are not disqualified by the criteria in subsection (3):

**(A)** An "agency based" employee of the department of community health laid off because of deinstitutionalization of the department of community health resident population after October 1, 1996.

**(B)** A nonexclusively represented employee who is indefinitely laid off on or after October 1, 1995.

**(2) Criteria.** An employee is eligible if the employee was (1) laid off for at least 6 months, (2) was laid off in satisfactory employment status, and (3) was not laid off from a temporary or limited-term appointment.

**(3) Disqualification.** An otherwise eligible employee is disqualified from receiving severance pay for any of the following reasons:

**(A)** The employee dies before accepting payment.

**(B)** The employee is hired in any position in the classified service.

**(C)** The employee refuses recall to state employment located within a 75-mile radius of the agency from which the employee was laid off.

**(D)** The employee is recalled to an indefinite appointment in a position covered by a collective bargaining agreement, in which case the agreement controls.

**(E)** The employee is hired for any position outside of the classified service and the initial base hourly rate for the position is 75 percent or more of the employee's final base hourly rate in the position from which the employee was laid off.

**(b) Time limits.** The appointing authority shall notify an employee of the employee's severance pay option 6 months and 12 months after then layoff.

**(1)** The employee may accept in writing the lump sum severance payment at any time after the first notice until 14 calendar days after the second notice. The employee is deemed to have rejected severance pay if the employee does not timely accept the severance pay in writing.

**(2)** If the employee accepts severance pay, the appointing authority shall pay the employee within 60 calendar days and remove the employee's name from all recall and layoff lists.

**(3)** Acceptance of severance pay constitutes a break in service and terminates any rights to continuous service credits for any purpose, including annual leave accrual and longevity.

**(c) Severance pay rates.** The severance payment for an eligible employee who accepts severance pay is determined by the regulations and the following table:

<u>Years of Service</u>	<u>Weeks of Severance Pay</u>
<u>1</u>	<u>1</u>
<u>2</u>	<u>2</u>
<u>3</u>	<u>3</u>
<u>4</u>	<u>4</u>
<u>5</u>	<u>5</u>
<u>6</u>	<u>7</u>
<u>7</u>	<u>9</u>
<u>8</u>	<u>11</u>
<u>9</u>	<u>13</u>
<u>10</u>	<u>15</u>



<u>11</u>	<u>18</u>
<u>12</u>	<u>21</u>
<u>13</u>	<u>24</u>
<u>14</u>	<u>27</u>
<u>15</u>	<u>30</u>
<u>16</u>	<u>33</u>
<u>17</u>	<u>36</u>
<u>18</u>	<u>39</u>
<u>19</u>	<u>42</u>
<u>20</u>	<u>45</u>
<u>21</u>	<u>48</u>
<u>22</u>	<u>51</u>
<u>23 or more</u>	<u>52</u>

(d) If an employee receives a severance payment, the employee may be rehired in the classified service only under the conditions provided in the regulations.

## 5-85-7 EXPENSE REIMBURSEMENT

### 5-8.15-7.1 TRAVEL EXPENSE REIMBURSEMENT

(a) **Eligibility.** An employee who incurs expenses for official travel is eligible for reimbursement in accordance with the standardized travel regulations issued by the department of management and budget.

(b) **Rates.** An employee is reimbursed at the rates approved by the civil service commission.

(1) **Recommendation.** The director of the department of management and budget and the state personnel director shall jointly recommend to the commission the travel reimbursement rates. The joint recommendation must be submitted no later than April 30 of each year, for the fiscal year beginning October 1 of the same year.

(2) **Comments.** Before submitting the recommendation, the director of the department of management and budget shall solicit comments from employees and limited recognition organizations regarding travel reimbursement rates, methods, indices, and the rate-setting process.

(3) **Action by the commission.** The civil service commission shall review the recommendation and shall approve, reject, or modify the recommendation.

(4) **Exceptions.** For reasons of business necessity, the director of the department of management and budget and the state personnel director are authorized to approve individual exceptions that vary from the approved travel reimbursement rates or the standardized travel regulations.

(c) **Administration.** The department of management and budget shall administer travel expense reimbursement programs.

## 1-1.25-7.2 MOVING EXPENSE REIMBURSEMENT

### (a) Eligibility.

**(1) Transferred employees.** An employee who is reassigned for the convenience and benefit of the state or involuntarily transferred is eligible for reimbursement of travel expenses, in accordance with the standardized travel regulations issued by the department of management and budget. An employee who is laid off because of a reduction in force and exercises employment preference is not eligible for reimbursement of moving expenses.

**(2) New employees.** An appointing authority may pay the reasonable moving expenses of a new employee not previously on the state payroll.

**(b) Rate.** The department of management and budget may approve rates for reimbursement of moving expenses in the standardized travel regulations.

**(c) Administration.** The department of management and budget shall administer the moving expense reimbursement programs.

## 5-8 LONGEVITY PAYMENT

### 5-9.1 SUPPLEMENTAL PAY PROVISIONS

The civil service commission may establish separate supplemental pay systems for special purposes, such as longevity. Employees shall become eligible and be paid in such systems in accordance with provisions contained in the compensation plan. An employee who completes the equivalent of 6 years of full-time currently continuous employment is eligible for an annual longevity payment in the amount provided below:

<u>Years of Full-time Service Completed</u>	<u>Annual Longevity Payment</u>
<u>6 – 9</u>	<u>\$260</u>
<u>10 – 13</u>	<u>\$300</u>
<u>14 – 17</u>	<u>\$370</u>
<u>18 – 21</u>	<u>\$480</u>
<u>22 – 25</u>	<u>\$610</u>
<u>26 – 29</u>	<u>\$790</u>
<u>30 &amp; over</u>	<u>\$1,040</u>

An employee with a break in continuous service but more than 6 years total employment is eligible for a longevity payment based on total years of service after completing the equivalent

of 5 years of full-time currently continuous employment. The longevity payment is paid as provided in the regulations.

## 5-105-9 SUPPLEMENT TO WORKERS' DISABILITY COMPENSATION

### 5-10.15-9.1 DUTY-INCURRED DISABILITY PAYMENT

Eligibility for workers' disability compensation is established under the Michigan Workers' Disability Compensation Act. In addition, an appointing authority shall pay a supplemental payment authorized in this rule to an eligible injured employee.

#### (a) General supplement up to two-thirds.

(1) Eligibility. A classified employee who is disabled by injury or illness for which the employee is eligible for state workers' disability compensation payments is eligible for this supplement.

(2) Rate. The appointing authority may allow a supplemental wage payment that, together with the workers' disability compensation payment, equals two-thirds of the regular salary or wage, subject to the limitations authorized in the regulations. The compensation plan may provide for a supplement to an employee's workers' compensation disability benefit if the employee suffered a work-incapacitating injury or illness which was duty-incurred or was the result of a job-related assault. Such payment, including use of leave credits, shall be made in accordance with provisions contained in the compensation plan.

#### (b) Special Supplement up to Full Weekly Net Wage.

##### (1) Eligibility.

(A) Employees. The following employees are eligible:

(1) An employee of the department of corrections in a correctional facility who is injured during a riot or as a result of an assault by a prisoner housed in the correctional facility.

[Note: MCL §791.263a]

(2) An employee of the department of state who is injured as a result of an assault while performing employment duties, rendering direct services to the public.

[Note: MCL §38.1181]

(3) An employee of the department of community health who is injured as a result of an assault by a recipient of mental health services.

[Note: MCL §330.1113]

(4) An employee of the family independence agency who is injured during the course of employment as a result of an assault by a recipient of social services at the W. J. Maxey Training School campus in Whitmore Lake or any of its affiliated facilities, the Adrian training school in Adrian, the Arbor Heights Center in Ann Arbor, Camp Nokomis in Prudenville, Camp Shawano in Grayling, or a similar facility under the jurisdiction of the family independence agency established or funded by the state.

[Note: MCL §400.1c]

(5) A person employed by the department of military and veterans affairs who is injured during the course of employment as a result of an assault by a recipient of social services at the Grand Rapids veterans' facility at Grand Rapids, the D. J. Jacobetti veterans' facility at Marquette, or any other veterans' facility operated by the department of military and veterans affairs.

[Note: MCL §333.2229]

**(B) Limitations.**

(1) The supplement is payable to an employee who is injured as the result of (1) a direct assault, (2) aiding another employee who is assaulted, or (3) responding, when officially obligated, to an alarm signaling an assault

(2) The supplement cannot exceed 100-weeks.

(3) The supplement cannot be paid if the employee receives any similar workers' disability compensation supplement authorized by statute including supplements authorized in Michigan Compiled Laws (MCL) §791.263a, MCL §38.1181, MCL §330.1113, MCL §400.1c, and MCL §333.2229.

(2) **Rate.** An eligible employee receives full wages from the employing department until worker's compensation benefits begin. After benefits begin, the employee receives a supplement that, when added to the workers' compensation benefits, equals the weekly net wage of the employee at the time of the injury. This supplement is paid only while the person is on the department's payroll and receiving worker's compensation benefits. Fringe benefits normally received by an employee remain in effect while the employee receives this supplement.

## 5-10 PAID HOLIDAYS AND LEAVE

### 5-10.1 PAID HOLIDAYS

~~A Full-time career employees shall be is allowed eight (8) hours paid absence from work on 12 approved state holidays. A less than full-time Ccareer employees who regularly provide less than full-time service are is entitled to allowed paid holiday absence in proportion to their time actually in pay status.~~

**(a) Procedure.** ~~The state personnel director shall~~Determination of ~~establish~~ the appropriate dates for holiday observances and additional standards for determining employee eligibility. ~~shall be in accordance with provisions contained in the compensation plan.~~

**(b) Work on a holiday.** An appointing authority may require an employees to work on a paid holiday. Such an employees ~~shall is be~~ compensated in accordance with any applicable provisions governing compensation for overtime and shift differential. ~~contained in the compensation plan.~~

### 5-10.2 PAID ~~ANNUAL~~ LEAVE

#### **(a) Leave accrual and accumulation.**

##### **(1) Annual Leave.**

**(A)** Upon entry into the classified service, ~~each career an eligible employee shall be~~ is credited with an initial annual leave grant of ~~sixteen (16) hours~~, which ~~shall be~~ is immediately available for use, upon approval of the appointing authority. The ~~sixteen (16) hours of initial grant of annual leave may cannot~~ be credited to an employee more than once in a calendar year.

**(B)** After completion of ~~seven hundred twenty (720) hours~~ of paid service in the initial appointment, ~~the an eligible employee shall have~~ annual leave credited in accordance with the following annual leave table:

<u>Years of Service</u>	<u>Hours of Annual Leave Accrued (for 80 hours of service)</u>	<u>Maximum Accumulation (hour of leave)</u>
<u>Less than 1</u>	<u>4.0</u>	<u>256</u>
<u>1 – 5</u>	<u>4.7</u>	<u>256</u>
<u>5 – 10</u>	<u>5.3</u>	<u>271</u>
<u>10 – 15</u>	<u>5.9</u>	<u>286</u>
<u>15 – 20</u>	<u>6.5</u>	<u>301</u>
<u>20 – 25</u>	<u>7.1</u>	<u>306</u>

<u>25 – 30</u>	<u>7.7</u>	<u>316</u>
<u>30 – 35</u>	<u>8.4</u>	<u>316</u>
<u>35 – 40</u>	<u>9.0</u>	<u>316</u>
<u>40 – 45</u>	<u>9.6</u>	<u>316</u>
<u>45 and above</u>	<u>10.2</u>	<u>316</u>

~~\_\_\_\_\_annual leave tables in the compensation plan.~~

**~~(a) Limitations of initial leave.~~**

(C) An eligible employee with at least 6 months of continuous satisfactory service on October 1 of each year is credited with an additional 16 hours of annual leave. [Note: These 16 hours are currently called “personal leave.”]

(D) An employee may accumulate credited annual leave hours up to the maximum authorized in the annual leave table in subsection B. Any annual leave hours earned above the maximum accrual is be credited and the hours are lost.

(2) **School participation leave.** An eligible employee who has completed 1,040 hours of satisfactory service is credited with 8 hours of school participation leave each October 1. School participation leave credits not used by the last pay period of the fiscal year are lost.

(3) **5-5.4 Sick Leave.** Every ~~A~~ career employee in the classified service ~~shall be~~ is credited with ~~four (4)~~ hours of sick leave with pay for each completed ~~eighty (80)~~ hours of service. Paid service in excess of ~~eighty (80)~~ hours in a biweekly pay period ~~is shall not be~~ counted.

**(b) Leave use and limitations.**

(1) ~~(b)~~—Crediting and ~~use~~ utilization of annual and school participation leave credits. An ~~Employees shall be~~ is credited with annual and school participation leave in accordance with the compensation plan. ~~established annual leave tables and accumulate and~~ An employee may use annual and school participation leave when approved by the appointing authority in accordance with ~~provisions contained in the compensation plan.~~

(2) ~~(a)~~—Crediting and ~~use~~ utilization of sick leave. An employee is credited with Crediting and utilization of sick leave, as well as payment at retirement, separation, or death shall be in accordance with ~~provisions contained in the compensation plan.~~ An employee may use sick leave in accordance with the compensation plan. ~~(b) Evidence of fitness.~~ An appointing authority may require ~~that~~ an employee to present medical certification of physical or mental fitness to continue working. The appointing authority may require an employee to be examined at state expense by a physician selected by the appointing authority.

**(3)(e) — Other limitations.** ~~No annual, school participation, and sick leave shall be~~ cannot be authorized, accumulated, or credited in excess of limits established in the compensation plan.

**(4)(d) — Special credit for annual leave and longevity.** Solely for the purpose of annual leave and longevity credit, a career employee ~~shall be~~ is allowed state service credit for the following:

**(A)(1) —** ~~Any~~ Service in a nonelective excepted or exempted position in a principal department, the legislature, or the supreme court, that immediately precedes entry or return to the classified service.

**(B)(2) —** Up to five years of honorable service in the armed forces of the United States completed ~~prior to~~ before entry into the classified service. When an employee who has received additional annual leave and longevity separates from the classified service and subsequently returns, military service previously credited ~~shall be~~ is recognized as prior service, subject to requalification for the benefits of this ~~rule~~ section.

## 5-11 GROUP HEALTH AND INSURANCE PLANS

### 5-11.1 TYPES OF GROUP HEALTH AND INSURANCE PLANS

**(1)(a) Types of group health and insurance plans.** The employer may provide eligible employees with the following group health and insurance plans as approved by the civil service commission:

~~(A)(4)~~ A medical benefit plan.

~~(B)(5)~~ A dental benefit plan.

~~(C)(6)~~ A vision benefit plan.

~~(D)(7)~~ A life insurance plan.

~~(E)(8)~~ An accidental death benefit plan.

~~(F)(9)~~ A long-term disability income protection plan.

**(2)(c) Recommendations.** The employer may annually recommend changes in the group health and insurance plans for nonexclusively represented employees during the coordinated compensation process. Limited recognition organizations and nonexclusively represented employees may comment on the employer's recommendation. The coordinated compensation panel shall make a final recommendation to the civil service commission.

**(3)(d) Action by the commission.** The civil service commission shall review the final recommendation of the coordinated compensation panel and may approve, reject, or modify the recommendation of the coordinated compensation panel.

**(4)(e) Publication.** The employer or plan provider shall make available to employees documentation describing each group health and insurance plan approved by the civil service commission.

**(5)(f) Administration.** The employer is responsible for implementing and administering the group health and insurance benefit plans approved by the civil service commission. The employer shall provide an expedited administrative review of employee grievances regarding group health and insurance plan coverages, exclusions, and costs. The employer's administrative review process is the exclusive procedure for reviewing employee grievances regarding group health and insurance plan coverages, exclusions, and costs.

**(b)(g) Other benefits.**

(1) The employer may establish and administer flexible spending accounts authorized under federal law.

(2) The employer may authorize payroll deduction of premiums for other insurance or benefit programs if the employee pays 100 percent of the total cost.

## 5-11.2 ELIGIBILITY FOR GROUP HEALTH AND BENEFIT PLANS

Classified employees are eligible for group health and insurance benefits approved by the civil service commission in accordance with the following eligibility table:

<u>APPOINTMENT TYPE →</u>	<u>CAREER APPOINTMENTS (INDEFINITE AND LIMITED-TERM):</u>				<u>NONCAREER APPOINTMENTS</u>
	<u>FULL-TIME</u>	<u>PART-TIME</u>	<u>PERMANENT- INTERMITTENT</u>	<u>SEASONAL</u>	<u>ALL TYPES</u>
<u>HEALTH PLAN</u>	Eligible	Eligible	Eligible	Eligible	Not Eligible
<u>DENTAL PLAN</u>	Eligible	Eligible (if working > 40% of full-time)	Eligible (if working > 40% of full-time)	Eligible if working full-time at least 8 months per year	Not Eligible
<u>VISION PLAN</u>	Eligible	Eligible (if working > 40% of full-time)	Eligible (if working > 40% of full-time)	Eligible if working full-time at least 8 months per year	Not Eligible



<u><b>LIFE INSURANCE PLAN</b></u>	<u>Eligible</u>	<u>Eligible (if working &gt; 40% of full-time)</u>	<u>Eligible (if working &gt; 40% of full-time)</u>	<u>Eligible (if working &gt; 40% of full-time)</u>	<u>Not Eligible</u>
<u><b>ACCIDENTAL DUTY DEATH</b></u>	<u>Eligible</u>	<u>Eligible</u>	<u>Eligible</u>	<u>Eligible</u>	<u>Not Eligible</u>
<u><b>LONG-TERM DISABILITY PLAN</b></u>	<u>Eligible</u>	<u>Eligible (if working &gt; 40% of full-time)</u>	<u>Eligible (if working &gt; 40% of full-time)</u>	<u>Eligible if working full-time</u>	<u>Not Eligible</u>

### 5-11.3 COSTS OF GROUP HEALTH AND INSURANCE PLANS

(a) **Costs.** The employer shall annually determine the total cost per employee to provide each group health and insurance plan benefit approved by the civil service commission. During the coordinated compensation process, the employer may propose that the cost of each group health and insurance plan be paid in part or in whole by employee.

(b) **Costs for part-time employees hired after December 31, 1999.** Notwithstanding any apportionment of costs approved by the civil service commission, an eligible part-time career employee is required to pay one-half of the total cost of the medical, dental, vision, and life insurance plans if (1) the employee has a regular work schedule of less than 50 percent of full-time and (2) the employee was first hired into the classified service after December 31, 1999.

## ~~5-17~~ 5-12 MAINTENANCE ALLOWANCE

### ~~5-12.1~~ MAINTENANCE ALLOWANCE

When allowances are made for maintenance or other purposes, they ~~shall be~~ are considered as part of compensation, unless specifically excepted by the civil service commission. A ~~P~~ayment of allowance for maintenance, such as meals, lodging, domestic or other personal services, medical care or treatment, laundry, or other services ~~shall be~~ is made in accordance with ~~provisions contained in~~ the compensation plan.

## 5-13 RETIREMENT

A classified employee is eligible for retirement benefits as provided by law.

## 5-14 COORDINATION OF BENEFITS

The state personnel director, in consultation with the employer, shall coordinate the civil service compensation plan with statutory benefit plans such as workers' disability compensation, duty and nonduty disability retirement, and social security disability.

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*[End of Chapter 5]*

# Chapter 6:

## EMPLOYEE-EMPLOYER

## RELATIONS ~~RULES~~

### 6-1 PURPOSE

#### 6-1.1 PURPOSE

This chapter provides classified employees with a voice in determining their compensation and other conditions of employment. This chapter permits (1) employees in eligible positions to engage in a form of collective bargaining with the employer and (2) employees in nonexclusively represented positions to meet and confer with the employer.

#### 6-1.2 CONSTITUTIONAL AUTHORITY

The civil service commission recognizes that there are fundamental economic, political, and legal differences between employer-employee relations in the state service and those in the private sector and other public sector employment. It is the view of the commission that constitutional provisions do not prohibit the commission from establishing a form of collective bargaining analogous to that in other public sector employment, so long as the collective bargaining agreements are subject to review, modification, and approval by the commission.

The constitution requires the commission to perform a combination of quasi-legislative, quasi-judicial, and administrative functions. This chapter integrates the constitutional responsibilities of the commission (article 11, §section 5) with that of the legislature (article 4 and article 11, §section 5) and the executive branch of government (article 5).

### 6-2 EMPLOYEE-EMPLOYER RELATIONS SYSTEMS

#### 6-2.1 COLLECTIVE BARGAINING AUTHORIZED

The civil service commission authorizes classified employees in eligible positions to organize, ~~to~~ elect an exclusive representative, and ~~to~~ negotiate with the employer over proper subjects of bargaining.

1 **(a) Rights and obligations.** The employer, ~~the~~ employees, and ~~the~~ exclusive representatives  
2 shall have the rights and obligations provided in the civil service rules and ~~the~~ regulations.

3 **(b) Subjects of bargaining.** The employer and the exclusive representative are required to  
4 bargain in good faith over mandatory subjects of bargaining. The employer may, but is  
5 not required to, negotiate over permissive subjects of bargaining. ~~No~~ A party may not  
6 bargain over ~~the~~ prohibited subjects of bargaining.

7 **(c) Intent; retention of authority.** The civil service commission intends to defer to and  
8 approve collective bargaining agreements negotiated in good faith between the employer  
9 and an exclusive representative when permitted by this chapter. However, the  
10 commission is obligated to retain and exercise its constitutional authority in all matters.  
11 The commission expressly retains the authority to do all of the following:

12 **(1)** ~~(1) to~~ Review, modify, or reject, in whole or in part, each proposed collective  
13 bargaining agreement.

14 **(2)** ~~(2) to~~ Approve rules of general applicability during the term of a collective  
15 bargaining agreement.

16 **(3)** ~~and (3) to~~ Determine, during the term of any collective bargaining agreement, if a  
17 provision previously approved has been applied or interpreted to violate or other-  
18 wise rescind, limit, or modify a civil service rule or regulation governing a prohibited  
19 subject of bargaining, notwithstanding any contrary provision of the agreement.

20 **(d) Collective bargaining agreement as substitute rules.** Each collective bargaining  
21 agreement approved by the civil service commission is expressly subject to and governed  
22 by these civil service rules and ~~any applicable~~ regulations. The approval of a collective  
23 bargaining agreement by the commission is a quasi-legislative act. The provisions of a  
24 collective bargaining agreement, when approved by the commission, become a subset of  
25 ~~commission~~ the civil service rules governing rates of compensation and other conditions  
26 of employment for the eligible employees in the applicable unit.

27 **(e) Collective bargaining agreement as a binding agreement.** An approved collective  
28 bargaining agreement is binding only between the employer and the exclusive  
29 representative. A collective bargaining agreement is not binding on the civil service  
30 commission or the department of civil service.

## 31 6-2.2 LIMITED-RECOGNITION ORGANIZATIONS AUTHORIZED

32 The civil service commission authorizes classified employees in nonexclusively represented  
33 positions to designate limited-recognition organizations to meet and confer with the employer  
34 over rates of compensation and other conditions of employment and to represent members in  
35 civil service grievance proceedings. The employer, employees, and the limited-recognition  
36 organizations shall have the rights and obligations provided in the civil service rules and ~~the~~  
37 regulations.

## 6-3 DEFINITIONS

### 6-3.1 DEFINITIONS

As used in these rules:

**NOTE 11:** The definitions in this rule have been relocated to Chapter 8.

## 6-3 COMMISSION AUTHORITY

### 6-3.1 COMMISSION RELATIONSHIP TO COLLECTIVE BARGAINING

The ability of eligible employees to elect an exclusive representative and to engage in collective bargaining is a privilege granted by the civil service commission under its exclusive constitutional authority. However, the commission cannot delegate its constitutional responsibilities to the collective bargaining parties and the privilege to engage in collective bargaining remains subject to the commission's sovereign authority and the rules of the commission.

**(a) Review and approval required.** No A collective bargaining agreement or any provision of a collective bargaining agreement ~~shall cannot~~ take effect or be enforceable between the parties unless the civil service commission has ~~first~~ reviewed and approved the agreement or provision.

**(b) Commission authority.** The civil service commission retains the authority to (1) approve, modify, or reject, in whole or in part, ~~any~~ proposed collective bargaining agreement presented to it for review and (2) to impose on the parties and eligible employees a collective bargaining agreement as modified by the commission.

**(c) Modification of agreement during term.** Notwithstanding that the civil service commission previously approved the provisions of a collective bargaining agreement, the commission retains the authority, during the term of ~~any~~ collective bargaining agreement, to modify the agreement without the approval of the parties, as provided in rules 6-3.5, 6-3.6, and 6-3.9(c). ~~6-4.5, 6-4.6, and 6-4.9(e).~~

**(d) Effect of agreement on commission and department.** The civil service commission and the department of civil service (1) are not parties to a collective bargaining agreement approved by the commission; (2) do not become parties to the collective bargaining agreement by virtue of the commission's review, approval, or modification; (3) are not subject to any of the provisions of a collective bargaining agreement; and (4) are not subject to the jurisdiction of an arbitrator or other fact-finder acting under authority of a collective bargaining agreement approved by the commission.

## 6-3.2 PROHIBITED SUBJECTS OF BARGAINING

No provision of a collective bargaining agreement, impasse panel recommendation, or arbitrator's decision under a collective bargaining agreement may be interpreted or applied to violate or otherwise rescind, limit, or modify a civil service rule or regulation governing a prohibited subject of bargaining.

## 6-3.3 INCORPORATION BY REFERENCE

The incorporation by reference of ~~any~~ civil service rule or regulation regarding a proper subject of bargaining in an approved collective bargaining agreement ~~shall~~ cannot diminish the authority of the civil service commission or the state personnel director to amend or repeal the rule or regulation with respect to nonexclusively represented employees.

## 6-3.4 MODIFICATION AFTER APPROVAL

A collective bargaining agreement approved by the civil service commission ~~shall~~ remains in force between the parties during its approved term, unless otherwise amended by the commission during its term as provided in rules 6-3.5, 6-3.6, or 6-3.9(c). ~~6-4.5, 6-4.6, or rule 6-4.9(e).~~ An amendment to an existing collective bargaining agreement is a quasi-legislative act.

## 6-3.5 MODIFICATION OF AGREEMENT OR ARBITRATOR'S DECISION

Notwithstanding any contrary rule or provision of a collective bargaining agreement, the civil service commission reserves the exclusive authority to determine during the term of a collective bargaining agreement if a provision previously approved has been applied or interpreted to violate or otherwise rescind, limit, or modify a civil service rule or regulation governing a prohibited subject of bargaining.

**(a) Complaint.** Any person may file a complaint with the state personnel director ~~a complaint~~ that a collective bargaining agreement or arbitrator's decision under a collective bargaining agreement has been applied or interpreted to violate or otherwise rescind, limit, or modify a civil service rule or regulation governing a prohibited subject of bargaining. The director shall investigate the complaint. After providing notice to the parties and an opportunity to be heard, the director shall determine if a violation has occurred. The definition of prohibited subjects of bargaining shall be liberally construed to enforce the constitutional authority of the civil service commission.

**(b) Remedy.** If the state personnel director determines that a violation has occurred, the director shall issue a report of ~~the director's~~ findings to the civil service commission. The director may also take any one or more of the following actions:

**(1)** Issue an order to cure or correct the violation.

1        **(2)** Issue an order to enjoin future violations.

2        **(3)** Recommend to the civil service commission that it amend the existing collective  
3        bargaining agreement to cure or correct the violation.

4        **(4)** In the case of an arbitrator's decision, the state personnel director may also exercise  
5        superintending authority to vacate or modify the decision of the arbitrator or remand  
6        the matter to the arbitrator for further consideration.

7        **(c) Appeal.** Any party to the collective bargaining agreement who is aggrieved by a final  
8        decision of the state personnel director may file an application for leave to appeal to the  
9        civil service commission within 14 calendar days after the ~~date the director's decision is~~  
10       issued.

11       **(d) Exclusive jurisdiction.** The procedures provided in this rule and in the regulations ~~shall~~  
12       ~~be~~ are the exclusive procedures for determining if a collective bargaining agreement or  
13       arbitrator's decision has been applied or interpreted to violate or otherwise rescind, limit,  
14       or modify a civil service rule or regulation governing a prohibited subject of bargaining.  
15       ~~No~~ A provision of a collective bargaining agreement, including a grievance procedure  
16       permitted by rule ~~6-9.6, 6-10.5,~~ cannot ~~may~~ replace, interfere with, or limit this exclusive  
17       jurisdiction or the superintending authority of the state personnel director or the civil  
18       service commission.

## 19       6-3.6                RULES OF GENERAL APPLICABILITY DURING TERM OF AGREEMENT

20       The civil service commission retains the authority to approve rules of general applicability  
21       during the term of any collective bargaining agreement and to apply the rule immediately to all  
22       classified employees, including employees covered by the agreement and ~~the~~ parties to the  
23       agreement, notwithstanding any contrary provision of the agreement.

24       **(a) Rule effective during term of agreement.** During the term of ~~any~~ collective bargaining  
25       agreement, a rule of general applicability may become immediately effective as to the  
26       employees covered by the agreement and the parties to the agreement if the following  
27       procedures are complied with:

28       **(1) Notice of pending rule.** The state personnel director shall issue a prior written  
29       notice to the state employer and the exclusive representatives. The notice must state  
30       that ~~at the~~ proposed rule of general applicability, if approved by the civil service  
31       commission, may become immediately effective as to all employees covered by the  
32       agreement and ~~the~~ parties to the agreement, notwithstanding any contrary provision  
33       of the agreement. The notice ~~shall~~ must provide at least 14 calendar days advance  
34       notice, as provided in rule ~~2-1.1.2-13.1.~~

35       **(2) Meet and discuss.** The parties to a collective bargaining agreement potentially  
36       affected by a proposed rule of general applicability may meet and discuss the

proposed rule and may jointly or separately advise the civil service commission regarding the proposed rule.

**(3) Approval of rule.** ~~At the time~~When the civil service commission approves a rule of general applicability, the commission shall approve a separate resolution that the rule is immediately effective as to all employees covered by ~~any~~ collective bargaining agreement and ~~the~~ parties to the agreement, notwithstanding any contrary provision of the agreement. The rule ~~shall preempt, modify, or and~~ voids any provision of an agreement previously approved by the commission that is inconsistent with the rule.

**(b) Amendment effective at end of term of agreement.** If a rule is approved without complying with the procedures required in subsection (a), the rule ~~shall become~~ effective immediately for all nonexclusively represented employees, but ~~shall become~~ effective ~~as to~~ ~~for~~ employees covered by a collective bargaining agreement and ~~to the~~ parties to the agreement only when the current approved term of the agreement ~~has expired~~.

#### 6-3.7 APPLICATION OF CIVIL SERVICE RULES AND REGULATIONS

**(a) Nonexclusively represented employees.** The rates of compensation for all ~~classes~~ classifications of positions and other conditions of employment for nonexclusively represented employees ~~shall be~~ are established in the civil service rules and regulations. An appointing authority may establish (1) individual levels of compensation within the rates fixed by the civil service commission for each classification and grade and (2) individual work rules that are not inconsistent with the ~~Michigan~~ constitution, applicable law, and the civil service rules, and ~~civil service~~ regulations.

**(b) Exclusively represented employees.** The rates of compensation for all ~~classes existing~~ grades within a classification of positions and other conditions of employment for exclusively represented positions may be established in a collective bargaining agreement approved by the civil service commission and in the civil service rules and regulations governing prohibited subjects of bargaining. ~~The provisions of a~~ An approved collective bargaining agreement ~~shall supersede~~ civil service rules and regulations governing proper subjects of bargaining that would otherwise ~~be applicable~~ apply in the absence of the collective bargaining agreement. However, a collective bargaining agreement ~~shall~~ cannot contravene the civil service rules and regulations governing prohibited subjects of bargaining.

#### 6-3.8 CIVIL SERVICE STAFF NEUTRALITY

The state personnel director and staff of the department of civil service shall not participate as advocates on behalf of either management or employees in the collective bargaining process.



### 6-3.9 LIMITATIONS ON TERM OF COLLECTIVE BARGAINING AGREEMENTS

**(a) Division of agreement.** A collective bargaining agreement may be undivided or may be subdivided into two sections. If the agreement is divided, ~~it-the parties shall be divided it,~~ to the extent practicable, into one subsection ~~that contains with~~ only economic provisions and one subsection ~~that contains with~~ only noneconomic provisions. ~~At the time When~~ a provision is submitted to the civil service commission or an impasse panel for review, each provision ~~shall must~~ be clearly marked to indicate whether it is included in the economic subsection or the noneconomic subsection.

**(b) Limitation on term.** Each collective bargaining agreement ~~shall must~~ contain an effective date and a termination date. If the agreement is subdivided into economic and noneconomic sections, the subsections may have different effective ~~dates and~~ termination dates. However, the maximum term of ~~any~~ unitary agreement, ~~any~~ section of a subdivided agreement, or ~~any~~ provision in an agreement ~~shall cannot~~ exceed ~~three-3~~ years.

**(c) Rates of compensation; legislative.** After the civil service commission approves a collective bargaining agreement, the state personnel director shall ~~annually give~~ annual notice of ~~any~~ approved increases in the rates of compensation to the governor for transmittal to the legislature as part of the governor's budget. If the legislature rejects or reduces the increases in rates of compensation approved by the commission, the commission shall amend the collective bargaining agreement to conform to the legislative action.

**(d) Evergreen provisions prohibited.** ~~No A~~ provision of a collective bargaining agreement ~~may cannot~~ authorize ~~any~~ provision of that agreement to be automatically extended beyond ~~three-3~~ years or beyond the approved expiration date of the agreement, whichever occurs earlier. If the parties agree that ~~any~~ provision of the agreement ~~shall should~~ continue in effect beyond the earlier of ~~three3~~ years or the approved expiration date without further negotiation, the parties ~~shall must~~ resubmit the entire agreement to the civil service commission for review as provided in rule ~~6-12, 6-13.~~

### 6-3.10 UNION LEAVE

A classified employee shall not engage in ~~any~~ union activities during actual-duty time. A classified employee may engage in union activities only while on approved union leave or ~~otherwise~~ on off-duty time.

**(a) Exclusively represented employees.** An appointing authority may approve union leave for an exclusively represented employee only to the extent authorized in the collective bargaining agreement.

1 **(b) Nonexclusively represented employees.** An appointing authority may approve union  
2 leave for a nonexclusively represented employee only to the extent authorized in these  
3 civil service rules and ~~or the~~ regulations.

4 **(c) Limitations and reporting requirements.** The grant of authority for union leave is  
5 expressly conditioned on compliance with the following:

6 **(1)** A classified employee is prohibited from engaging in union activities or political  
7 activities during actual-duty time. An appointing authority shall discipline any  
8 employee who engages in union activities or political activities during actual-duty  
9 time.

10 **(2)** A manager or supervisor is prohibited from permitting a classified employee to  
11 engage in union activities or political activities during actual-duty time. The  
12 appointing authority shall discipline ~~any~~ manager or supervisor who permits an  
13 employee to engage in union activities or political activities during actual-duty time.

14 **(3)** ~~Each~~ classified employee shall accurately report on a biweekly basis the amount  
15 and type of union leave taken.

16 **(4)** ~~Each~~ ~~An~~ appointing authority shall accurately enter on a biweekly basis the amount  
17 of union leave reported by employees.

18 **(5)** The state employer shall report annually to the civil service commission on the state  
19 subsidy for union activities. The report ~~shall~~ must include the amount, type, and  
20 value of all state-paid union leave, administrative leave banks, administrative union  
21 officer leave, and any other arrangement ~~whereby which~~ whereby which an employee receives any  
22 compensation, benefit, or benefit accrual paid in whole or in part by the state for  
23 union activities.

24 **(6)** The state employer or an appointing authority are prohibited from ~~shall not entering~~  
25 into any formal or informal written or unwritten agreements permitting classified  
26 employees to engage in union activities on actual-duty time or to receive any  
27 compensation, benefit, or benefit accrual paid in whole or in part by the state for  
28 union activities, ~~except as~~ unless expressly included in a collective bargaining  
29 agreement approved by the civil service commission.

## 30 6-4 RIGHTS OF EMPLOYER

### 31 6-4.1 MANAGEMENT RIGHTS

32 The employer may determine or exercise the following without engaging in collective bar-  
33 gaining:

34 **(a)** Matters of managerial policy.

- 1   **(b)** Mission of the agency.
- 2   **(c)** Budget.
- 3   **(d)** The method, means, and personnel by which government operations are to be conducted.
- 4   **(e)** Organizational structure.
- 5   **(f)** Standards of service and maintenance of efficiency.
- 6   **(g)** The right to select, direct, assign, or transfer employees.
- 7   **(h)** The right to discipline employees for just cause.
- 8   **(i)** The right to relieve employees from duty and abolish positions for reasons of administra-  
9       tive efficiency including, for example, lack of work, lack of adequate funding, change in  
10      departmental mission, or reorganization of the work force.
- 11   **(j)** In case of emergency, the right to take whatever action may be necessary to carry out the  
12      agency's mission.

#### 13   **6-4.2           SUBSTANTIAL ADVERSE IMPACT**

14   If ~~any~~ determination or exercise of rights by the employer produces substantial adverse impact  
15   on employees covered by a collective bargaining agreement, the modification and remedy of  
16   any resulting impact ~~shall be~~ is subject to collective bargaining unless the parties have already  
17   bargained such matters.

#### 18   **6-4.3           DUTY TO BARGAIN**

19   The employer shall not bargain over management rights that are prohibited subjects of  
20   bargaining. The employer may, but is not required to, bargain over management rights that  
21   are permissive subjects of bargaining.

#### 22   **6-4.4           AUTHORITY OF GOVERNOR**

23   The civil service commission recognizes that the governor has the following responsibilities  
24   and authority:

- 25   **(a)** To develop, direct, and coordinate the employer's employment relations policy.
- 26   **(b)** To negotiate with exclusive representatives.
- 27   **(c)** To recommend to the civil service commission, in consultation with principal departments  
28       and elected department heads, a comprehensive plan for rates of compensation and other  
29       conditions of employment for nonexclusively represented employees.

## 6-5 RIGHTS OF EMPLOYEES

### 6-5.1 PARTICIPATION BY EMPLOYEES

Employees may organize, form, assist, join, or refrain from joining labor organizations, ~~of their own choosing.~~ Eligible employees may also engage in concerted activities for ~~the purpose of~~ collective bargaining with the employer.

### 6-5.2 RESIGNATION

No eligible employee ~~shall be~~ required to become or remain a member of a labor organization. An employee ~~shall have~~ has the right to resign from a labor organization at any time. A resignation ~~shall be~~ effective no later than 28 calendar days after the employee gives written notice to the labor organization. ~~No~~ A provision of a collective bargaining agreement or labor organization constitution or bylaws ~~may not~~ may not limit or condition the right of an eligible employee to resign at any time.

### 6-5.3 EXCLUSIVELY REPRESENTED EMPLOYEES

Eligible employees have the right to exclusive representation as provided in these rules. When the state personnel director has certified an exclusive representative, employees in the unit have the following rights to be represented:

- (a) **Bargaining.** With respect to proper subjects of bargaining, exclusively represented employees may be represented only through their exclusive representative.
- (b) **Grievances.** With respect to grievances, an employee may be represented only by the exclusive representative. However, an employee or group of employees has the right at any time to present grievances to the employer and to have the grievances adjusted, without the intervention of the exclusive representative, as long as the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect. The employer shall give the exclusive representative ~~shall be given~~ an opportunity to be present at any such adjustment.

### 6-5.4 NONEXCLUSIVELY REPRESENTED EMPLOYEES

Nonexclusively represented employees have a right to be represented through a limited-recognition organization regarding grievances, rates of compensation, and other conditions of employment. In addition, nonexclusively represented employees have the right to represent themselves or to be represented by another person in a grievance proceeding, as provided in the regulations.

## 6-6 DETERMINATION OF REPRESENTATION

### 6-6.1 UNIT DETERMINATION AND REDETERMINATION

The state personnel director shall legislatively establish the most appropriate units of eligible employees organized along broad occupational lines with a community of interest. The director, upon request of the state employer or ~~any~~ labor organization, may abolish, redefine, realign, or merge, in whole or in part, recognized units, if the director determines that the existing units are no longer the most appropriate units. The state employer and all labor organizations that may be affected by a change in the existing units shall meet and discuss the proposed changes before ~~any~~ request is filed with the director. Any abolition, redefinition, realignment, or merger of a unit ~~shall take~~ effect only at the end of the term of an affected collective bargaining agreement, unless the state employer and the exclusive representative agree to an earlier date. The state employer or a labor organization may file with the civil service commission an application for leave to appeal ~~any~~ unit determination by the director. The application ~~shall must~~ be filed within 14 calendar days after ~~the date~~ the director's decision is released. The director's decision ~~shall be~~ is stayed if a timely application is received by the commission or employment relations board.

### 6-6.2 PETITION FOR ELECTION; SHOWING OF INTEREST

**(a) Petition for election.** An eligible employee, or any individual or labor organization acting on behalf of an eligible employee, may petition for a unit election. The petition must be accompanied by suitable evidence that at least 30 percent of the eligible employees in the unit either want to be represented by another identified organization or no longer want to be represented by any exclusive representative.

**(b) Showing of interest.** The state personnel director shall order an election if the director finds a *bona fide* question of representation exists and ~~if~~ the petitioner shows the interest of 30 percent or more of the eligible employees actively at work in the unit. Otherwise, the director shall dismiss the petition as insufficient. Although the director shall consider any irregularity that might otherwise preclude the existence of a *bona fide* question of representation, the sufficiency of showings of interest is a matter for administrative determination, ~~and~~ ~~the~~ The director's decision is not subject to collateral attack by the parties. ~~When~~ ~~re~~ a petition is dismissed, the petitioning party ~~shall must~~ be informed of the reason for the dismissal. The petitioning party may file an application for leave to appeal the director's decision to the civil service commission.

**(c) Intervenors.** ~~When re an election has been authorized by~~ the state personnel director authorizes an election, another organization may ~~be permitted to~~ intervene and be placed on the ballot if the ~~other~~ organization submits suitable evidence that at least 10 percent of the eligible employees actively at work in the unit wish to be represented by the intervening organization.

(d) **Certification elections.** Certification elections ~~shall be~~ conducted and supervised by the state personnel director upon determination of the eligible voters by agreement or ~~by~~ hearing. The ballots for a certification election ~~shall~~ must contain an appropriate space for employees to indicate that no representation is desired.

### 6-6.3 CERTIFICATION; RUN-OFF ELECTION

~~A labor organization shall be certified by~~ The state personnel director shall certify a labor organization as the exclusive representative of all eligible employees in a unit if the organization receives a majority of valid ballots cast in the certification election. If none of the choices on the ballot receives a majority of the votes cast, the state personnel director shall conduct a run-off election. The run-off ballot ~~shall~~ contains only the two choices receiving the greatest most and the second greatest-most number of votes in the original election.

(a) **Election bar.** If the members choose “no representation,” the state personnel director shall not conduct an election in the unit for a ~~period of 24 months after the date the~~ election results are certified. If an exclusive representative is certified, the state personnel director shall not accept ~~any~~ new petitions in the unit for a ~~period of 24 months after the date of certification.~~

(b) **Contract bar.** Notwithstanding subsection (a), if the civil service commission has approved a collective bargaining agreement for a unit, the state personnel director shall not consider any new petitions during the term of the agreement except during the window period.

(c) **Window period.** If the collective bargaining agreement is a unitary agreement, election petitions may be accepted only during a ~~two~~ 2-month window period ending ~~six~~ 6 months before the expiration of the agreement that would otherwise constitute a bar to an election. If the agreement is divided into economic and noneconomic subsections, election petitions may be accepted only during a ~~two~~ 2-month window period ending ~~six~~ 6 months before the expiration of the noneconomic section of the agreement.

(d) **Post-election provisions; certification.** When a newly elected exclusive representative is certified in a unit after an election and replaces an exclusive representative, the following conditions will be observed:

(1) The former exclusive representative shall immediately cease to represent the employees in the unit.

(2) The newly elected exclusive representative may either assume and administer the existing contract until its expiration or repudiate the existing contract.

(3) In either case, the newly elected exclusive representative shall negotiate a new contract with the office of state employer.

(4) No dues or service fees ~~shall~~ may be paid to the former exclusive representative beyond those deducted for the pay period in which the certification is issued.

(5) Dues and service fees ~~shall~~ cannot be deducted and paid to the new exclusive representative until the requirements of the regulations on dues deductions are fulfilled.

**(e) Post-election provisions; decertification.** When an exclusive representative is decertified in a unit after an election, the following conditions will be observed:

(1) The former exclusive representative shall immediately cease to represent the employees in the unit.

(2) Any primary or secondary collective bargaining agreements ~~shall~~ are immediately be void and the unit members ~~shall~~ are be subject to the rates of compensation and other conditions of employment applicable to other nonexclusively represented employees.

(3) After the end of the pay period in which the decertification is issued, the state shall not deduct ~~any~~ dues or service fees from any classified employee or pay ~~any~~ dues or service fees to the former exclusive representative, except dues and service fees deducted through the pay period in which the decertification is issued.

#### 6-6.4 EXCLUDED POSITIONS

The state employer, in consultation with the appointing authorities, shall designate the excluded positions outside the department of civil service. If an exclusive representative disagrees with a designation of the state employer, the exclusive representative may petition the state personnel director to resolve the dispute. The director shall administratively determine ~~if whether~~ a position is ~~or is not~~ an excluded position. The decision of the director is final unless the state employer, the attorney general, the secretary of state, or an exclusive representative aggrieved by the decision files an application for leave to appeal with the civil service commission within 14 calendar days after the ~~date of the~~ decision. The procedure authorized in this rule ~~6-7.4~~ is the exclusive procedure for resolving disputes concerning excluded positions.

### 6-7 DUES AND FEES

#### 6-7.1 MEMBERSHIP DUES FOR EXCLUSIVE REPRESENTATIVES

If agreed to in a collective bargaining agreement, the state may deduct the dues of a member of an exclusive representative through payroll deduction. Notwithstanding any contrary provision of a collective bargaining agreement, an appointing authority shall not deduct ~~any~~ membership dues unless the employee has filed a prior, voluntary, written authorization ~~for the deduction of dues.~~

## 6-7.2 SERVICE FEE AUTHORIZED

Nothing in this rule ~~shall~~ precludes the employer from making an agreement with an exclusive representative to require, as a condition of continued employment, that each eligible employee in the unit who ~~elects~~ chooses not to become a member of the exclusive representative shall pay a service fee to the exclusive representative. If agreed to in a collective bargaining agreement, the state may deduct the service fee by payroll deduction. An appointing authority shall not deduct a service fee unless the employee has filed a prior written authorization ~~for the deduction of the fee~~ or as otherwise authorized in a collective bargaining agreement.

## 6-7.3 LIMITATIONS ON SERVICE FEE

The amount of a service fee ~~shall~~ cannot exceed the employee's proportionate share of the costs of the activities that are necessary to perform its duties as the exclusive representative in dealing with the employer on labor-management issues. The service fee ~~shall~~ may include only the costs germane to collective bargaining, contract administration, grievance adjustment, and any other cost necessarily or reasonably incurred for the purpose of performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues.

## 6-7.4 RIGHT OF FEE-PAYER TO OBJECT

An employee required to pay a service fee ~~shall have~~ the right to object to the amount of the service fee and ~~to~~ obtain a reduction of the service fee to exclude all expenses not germane to collective bargaining, contract administration, and grievance adjustment, or otherwise necessarily or reasonably incurred for the purpose of performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues. Each collective bargaining agreement ~~shall~~ must provide a procedure ~~for an objector~~ that provides an objector with the following rights: ~~for an objector~~:

(a) The right to financial information sufficient to determine how the service fee ~~was~~ is calculated.

(b) The right to challenge the amount of the service fee before an impartial ~~decisionmaker~~ decision-maker.

(c) The right to have any disputed amount of the service fee placed in escrow by the exclusive representative pending a final decision.

## 6-7.5 ANNUAL NOTICE OF RIGHTS

The state personnel director shall annually give written notice of each of the following rights and obligations to each classified employee:



- 1 **(a)** The right of an eligible classified employees to join or not to join an exclusive  
2 representative without affecting the employment status of the employee.
- 3 **(b)** If the employee ~~elects~~ chooses to join the exclusive representative, the right not to  
4 maintain membership in an exclusive representative ~~in order to retain his or her a job.~~
- 5 **(c)** If the employee ~~elects~~ chooses not to be a member of the exclusive representative, the  
6 obligation to pay a service fee as provided in rule ~~6-7.2~~ 6-8.2.
- 7 **(d)** If the employee ~~elects~~ chooses not to be a member of the exclusive representative and is  
8 obligated to pay a service fee, the rights guaranteed under ~~F~~ federal and state law.
- 9 **(e)** The prohibitions against political activities and union activities during actual-duty time.

#### 10 **6-7.6** ADDITIONAL POSTED NOTICE

11 Each appointing authority shall ~~be required to~~ post in conspicuous places a notice, in the form  
12 prescribed by the state personnel director, informing employees of the rights and obligations  
13 set forth in this rule.

#### 14 **6-7.7** ACCOUNTING

15 ~~An Every~~ exclusive representative shall account for and report fees and expenses in such detail  
16 as necessary to allow employees to determine the proportionate costs of expenditures  
17 necessarily or reasonably incurred for the purposes of performing the duties of an exclusive  
18 representative of the employees in dealing with the employer on labor-management issues.  
19 Each exclusive representative shall provide ~~to the state personnel director annually three~~  
20 copies of an audited report accounting for its fees and expenses to the state personnel director  
21 annually.

### 22 **6-8** RECOGNITION RIGHTS FOR LABOR ORGANIZATIONS

#### 23 **6-8.1** RIGHTS OF EXCLUSIVE REPRESENTATIVES

24 An exclusive representative (1) has the duty of fair representation of all employees in the unit,  
25 (2) may engage in collective bargaining with the employer, and (3), ~~when~~ re mutual agreement  
26 is reached, may submit to the civil service commission for approval a written collective  
27 bargaining agreement regarding proper subjects of bargaining.

#### 28 **6-8.2** LIMITATION ON REPRESENTATION

29 A labor organization certified as an exclusive representative in ~~any~~ unit is prohibited from  
30 representing (1) any employee in an eligible position prior to being certified as the exclusive  
31 representative in the employee's unit and (2) any employee occupying an excluded position.

### 6-8.3 LIMITED-RECOGNITION ORGANIZATIONS

Employees in excluded positions ~~shall be~~ not be eligible for exclusive recognition but may join and be represented by limited-recognition organizations. Employees in eligible positions in units that have not yet elected an exclusive representative may join and be represented by limited-recognition organizations. However, a limited-recognition organization shall not represent nor seek to represent an employee in an eligible position after an exclusive representative has been certified in the employee's unit.

**(a) Limited-recognition status and payroll deduction of dues.** The state personnel director shall recognize as a limited-recognition organization any organization that registers with the director and provides (1) a copy of its constitution, bylaws, or other governing documents; (2) the names and addresses of its officers; (3) proof of registration as a nonprofit corporation in the state of Michigan; and (4) proof of membership of 50 or more excluded employees. Proof of membership ~~shall must~~ be in the form of signed membership application forms. Upon submission to the office of state employer of 50 or more appropriate dues deduction cards, such an organization ~~shall have~~ the privilege of payroll deduction of dues for members who are excluded. An No-employee ~~shall cannot~~ have the privilege of payroll deduction of dues to more than one organization.

**(b) Limited recognition rights.** An organization granted limited recognition under this rule ~~shall also have~~ the following rights:

**(1)** The right to express the interests of its members.

**(2)** The right to represent its members in civil service grievance hearings and technical appeals, when requested by the member.

**(3)** The right to be heard by the employer, the employment relations board, and the civil service commission.

**(4)** The right to union leave for union activities as may be provided in the regulations.

## 6-9 NEGOTIATIONS AND IMPASSE

### 6-9.1 PRIMARY NEGOTIATIONS

The state employer, acting in consultation with principal departments, the attorney general, and the secretary of state, shall direct primary negotiations on behalf of the employer. The state employer shall coordinate all negotiations and administration of collective bargaining agreements with the appointing authorities. Upon request of the attorney general or the secretary of state, the state employer shall reserve all noneconomic issues in the office of attorney general or department of state for secondary negotiations. The parties may coordinate bargaining between the state employer and more than one exclusive representative.

## 6-9.2 TIMING OF PRIMARY NEGOTIATIONS

The state personnel director shall annually establish a time frame for the conduct of primary negotiations and impasse resolution. The time frame ~~shall~~must coordinate with the legislative budget cycle and the constitutional provisions governing the timing of increases in rates of compensation for classified employees. If the collective bargaining parties cannot reach agreement by the date established by the director, the parties may refer the matter to the impasse panel for resolution. If a newly-certified exclusively representative cannot complete bargaining for a new agreement before a new fiscal year begins, An exclusive representative newly certified at a time in the budget cycle that effectively precludes its exercising bargaining rights shall have the rates of compensation for its members for the fiscal year affected are determined in the same manner as nonexclusively represented employees.

## 6-9.3 FAILURE TO REQUEST IMPASSE

~~If, by the date an existing collective bargaining agreement expires, the parties have not reached a voluntary agreement or timely requested impasse panel assistance~~ by the date an existing collective bargaining agreement expires, the civil service commission may require the parties to refer their unresolved issues to the impasse panel. The commission shall provide the parties written notice of its intention to consider a mandatory referral at least 28 calendar days in advance of its consideration.

## 6-9.4 IMPASSE RESOLUTION

If either party files a timely request for impasse panel assistance, the parties ~~shall be~~are eligible for impasse panel assistance. If neither party files a timely application, the parties ~~shall be~~are ineligible for impasse panel assistance, except as provided in rule ~~6-9.3.6-10.3~~. If the parties are ineligible for impasse panel assistance, the state personnel director may require the use of mediation, advisory arbitration, or fact-finding provided in the regulations. If the civil service commission approves ~~any~~ increases in the rates of compensation too late to be included in the governor's budget, the increases ~~shall~~must be submitted under the waiver of notice provisions of article 11, section 5, of the ~~Michigan~~ constitution.

**(a) Impasse Ppanel Pprocedures.** The impasse panel ~~shall be~~is governed by these civil service rules and ~~the regulations, issued by the state personnel director.~~

**(1) Notice of impasse.** The state personnel director shall notify the employment relations board if a party submits a request for impasse panel assistance.

**(2) Required submissions by the parties.** The state personnel director shall establish a date by which the parties ~~shall~~must submit ~~to the impasse panel~~ the following to the impasse panel:

**(A)** A joint certification of the text of all contract provisions to which the parties have tentatively agreed.

1        **(B)** A joint certification of the provisions over which the parties have negotiated in  
2        good faith but have failed to reach a proposed agreement.

3        **(C)** A submission by each party of proposed contract language for those provisions  
4        certified at impasse in subsection (B).

5        **(3) Date of recommendation.** The state personnel director shall establish the date by  
6        which the impasse panel ~~shall~~ must submit its recommendation to the civil service  
7        commission.

8        **(4) Establish impasse panel.** Upon notice by the state personnel director, the employ-  
9        ment relations board shall designate the members of the impasse panel. ~~who~~ The  
10       panel shall consider the submissions of the parties and shall make a recommendation  
11       to the civil service commission.

12       **(5) Coordination.** The impasse panel shall simultaneously consider all unresolved  
13       contract disputes certified at impasse on a coordinated basis in all bargaining units ~~in~~  
14       ~~a manner as~~ prescribed in the regulations.

15       **(6) Recommendation.** The impasse panel shall ~~transmit~~ send its recommendation to the  
16       civil service commission on or before the date established by the state personnel  
17       director.

18       **(7) Voluntary agreement.** The parties may resolve their impasse by voluntary agree-  
19       ment at any time before the civil service commission takes final action on the  
20       recommendation of the impasse panel.

21       **(b) Impasse Panel Criteria.** The parties shall address, and the impasse panel shall  
22       consider, the following criteria, if relevant:

23       (1) Stipulations and agreements.

24       (2) The interests and welfare of the public.

25       (3) The financial condition and ability of the state.

26       (4) Comparison of the rates of compensation and other conditions of employment of  
27       classified employees with other governmental and private sector employees.

28       (5) Appropriate economic indicators and forecasts.

29       (6) Total compensation, including fringe benefits, presently received by employees.

30       (7) Such other factors that are normally taken into consideration in determining rates of  
31       compensation and other conditions of employment.

## 6-9.5 NO DISCLOSURE

A mediator ~~shall cannot~~ be required to disclose information relating to a particular dispute ~~that the mediator acquired in the course of while~~ mediating the dispute under this rule.

## 6-9.6 NEGOTIATED GRIEVANCE PROCEDURES

**(a) Negotiated grievance procedure.** An exclusive representative and the employer may agree upon a procedure for the resolution of grievances of exclusively represented employees against the departmental employer, subject to the limitations established in law, including the civil service rules and regulations.

### **(b) Jurisdictional limitations on arbitrators.**

**(1)** Notwithstanding any provision of a collective bargaining agreement, the authority of an arbitrator or other fact-finder under a procedure authorized in a collective bargaining agreement ~~shall remain~~ is subject to and subordinate to the limitations and restrictions on subject matter and personal jurisdiction imposed by these civil service rules and ~~the~~ regulations.

**(2)** Notwithstanding any provision of a collective bargaining agreement, ~~every an~~ arbitrator or other fact-finder acting under a procedure authorized in a collective bargaining agreement is subject to the superintending control of the state personnel director, subject to appeal to the civil service commission, when the director is exercising the authority granted in rule ~~6-3.56-4.5~~.

**(3)** None of the following disputes ~~shall can~~ be adjudicated in a grievance procedure authorized in a collective bargaining agreement, but ~~shall can~~ only be adjudicated in a civil service forum under the exclusive procedures provided for in the civil service rules and regulations:

**(A)** A grievance by an employee who is aggrieved by the abolition or creation of a position.

**(B)** ~~Any~~ grievance by an employee disciplined or denied the use of sick or annual leave for striking.

**(C)** ~~Any~~ complaint including, but not limited to, a grievance, technical appeal, or labor relations appeal, against the civil service commission, the department of civil service, or any employee of the department of civil service.

**(D)** ~~Any~~ complaint including, but not limited to, a grievance, technical appeal, or labor relations appeal, arising out of or related to a prohibited subject of bargaining.

(E) Any matter or dispute in which civil service rules or regulations provide an exclusive procedure or forum for the resolution of the matter or dispute.

(4) Rule ~~6-9.66-10.6~~ does not create grievance or appeal rights.

## 6-9.7 SECONDARY NEGOTIATIONS

If secondary negotiations are authorized in a primary agreement, the secondary negotiations ~~shall must~~ be concluded no later than ~~three~~ 3 months after the date the civil service commission approved the primary agreement. The secondary agreement ~~shall must~~ be submitted to the commission for review as provided in rule ~~6-126-13~~. If the parties ~~fail to do~~ not submit timely a complete proposed secondary agreement to the commission for review, the negotiations ~~shall be~~ are considered at impasse and all matters related to mandatory subjects of bargaining ~~shall be~~ are referred to an impasse panel. The impasse panel shall recommend to the commission a binding secondary agreement to regulate conditions of employment for the employees in the department.

## 6-9.8 REGULATIONS

The state personnel director may issue regulations not inconsistent with these rules to establish impasse, conference, mediation, and advisory arbitration procedures for the resolution of disputes.

# 6-10 EMPLOYMENT RELATIONS BOARD

## 6-10.1 EMPLOYMENT RELATIONS BOARD

The civil service commission shall appoint an employment relations board consisting of three unclassified members who ~~shall be~~ are compensated on a *per diem* basis, as determined by the commission. The commission shall designate one of the members as the chair of the board.

## 6-10.2 TERM OF OFFICE

The members ~~shall be~~ are appointed to staggered terms of ~~three~~ 3 years each and ~~shall~~ serve at the pleasure of the civil service commission. A person appointed to fill a vacancy on the board ~~shall be~~ is appointed only for the unexpired term. All terms of office ~~shall~~ expire May 1 in the year of expiration. A member may be reappointed.

## 6-10.3 QUORUM AND ACTION

Two members of the board ~~shall~~ constitute a quorum. The board ~~shall~~ acts by a vote of a majority of a quorum. If a quorum consists of only two members and they cannot agree, the

board shall not act but shall forward the matter to the civil service commission with the separate recommendation of each member.

#### 6-10.4 DUTIES

The employment relations board ~~shall have~~ the following duties:

**(a)** Review all appeals of right to the civil service commission and recommend final action to the commission.

**(b)** Review all applications for leave to appeal to the civil service commission and recommend the grant or denial of leave to appeal. If the board recommends granting the application, the board shall not refer that recommendation to the commission until after the board has considered the appeal on its merits and has issued a final recommendation on the merits of the appeal.

**(c)** Serve as the members of any impasse panel or coordinated compensation panel. However, the board instead may appoint one or more of its own members or ~~one or more~~ other persons to serve as the panel.

**(d)** Review all other matters referred to it by the civil service commission or the state personnel director.

**(e)** ~~Recommend to the state personnel director regulations governing board procedures to~~ the state personnel director.

#### 6-10.5 FINAL ACTION BY THE COMMISSION

The employment relations board shall file its final recommendations with the civil service commission. After reviewing the board's recommendations, the commission shall issue a final decision in the matter. The commission may approve, reject, or modify, in whole or in part, the board's recommendations. If the commission rejects, in whole or in part, the board's recommendations, the commission may (1) remand the matter to the board or other officer for further action, (2) issue a final judgment or decision that rejects or modifies the recommendation of the board, or (3) exercise any other power of the board or commission.

### 6-11 COORDINATED COMPENSATION PLAN

#### ~~6-11.1 COORDINATED COMPENSATION PLAN~~

The coordinated compensation panel shall ~~transmit~~ send ~~to the civil service commission a~~ recommended coordinated compensation plan for all nonexclusively represented classified employees to the civil service commission. The panel shall consider negotiated collective bargaining agreements, any impasse panel recommendations, and any recommendations of the

1 | employer or employees. The panel's shall send its recommendation ~~shall be transmitted~~ on or  
2 | before the date set by the state personnel director.

## 3 | 6-12 COMMISSION REVIEW AND ACTION

### 4 | 6-12.1 COMMISSION REVIEW OF AGREEMENTS, IMPASSE PANEL 5 | RECOMMENDATIONS, AND COORDINATED COMPENSATION 6 | RECOMMENDATIONS

7 | It is the policy of the civil service commission to encourage agreement between the parties.  
8 | However, the commission retains the final authority to approve, modify, or reject, in whole or  
9 | in part, all collective bargaining agreements, impasse panel recommendations, and coordinated  
10 | compensation recommendations submitted to the commission. Therefore, if the parties reach  
11 | a proposed collective bargaining agreement, the parties shall submit a copy of the proposed  
12 | agreement to the commission for review. If the parties are at impasse, the impasse panel shall  
13 | submit its recommendations for impasse resolution to the commission. The commission shall  
14 | review each proposed agreement, impasse panel recommendation, and coordinated compen-  
15 | sation recommendation. The commission shall approve, modify, or reject, in whole or in part,  
16 | each agreement and recommendation.

### 17 | 6-12.2 PERMISSIVE REJECTION OR MODIFICATION OF AGREEMENTS

18 | The civil service commission may reject or modify, in whole or in part, any provision of a  
19 | proposed collective bargaining agreement, including a provision previously approved by the  
20 | commission.

### 21 | 6-12.3 MANDATORY REJECTION OR MODIFICATION

22 | The civil service commission shall reject or modify, in whole or in part, any agreement or  
23 | recommendation that contains one or more of the following provisions:

24 | (a) ~~Any~~ provision that is contrary to law, including article 11, section 5, of the Michigan  
25 | constitution ~~of 1963~~.

26 | (b) ~~Any~~ provision of an impasse panel recommendation that includes an award involving  
27 | permissive subjects of bargaining, unless the state employer voluntarily submitted the  
28 | matter to the impasse panel.

29 | (c) ~~Any~~ provision that supersedes or violates a civil service rule or regulation governing a  
30 | prohibited subject of bargaining.

31 | (d) ~~Any~~ provision that is arbitrary, capricious, or contrary to the public interest.



#### 6-12.4 INTENT TO REJECT OR MODIFY; REFERRAL TO PARTIES

If the civil service commission proposes to reject or materially modify ~~any~~ provision of a proposed collective bargaining agreement, the commission shall exercise its authority as provided in this rule ~~6-13.4~~.

**(a) Mandatory subject of bargaining.** If the civil service commission proposes to reject or materially modify a provision regarding a mandatory subject of bargaining, the commission, before taking final action, ~~to reject or modify the provision,~~ shall first refer the agreement back to the parties for further consideration as provided in this subsection ~~(a)~~.

**(1) Notice.** The state personnel director shall give written notice to the parties of the proposed rejection or modification and the reasons for the proposed rejection or modification.

**(2) Referral.** The proposed agreement ~~shall~~ must be returned to the parties to consider the proposed civil service commission action for ~~a period of~~ 28 calendar days.

**(3) Response.** Within 28 calendar days after the ~~date of~~ notice by the state personnel director, the parties may jointly or separately respond ~~advise to~~ the civil service commission in writing ~~of their response~~. The director, with the consent of the chair of the commission, may extend the response deadline.

**(4) Action by commission.** After receiving responses from the parties or, if the parties do not respond, after the expiration of the response period, the civil service commission shall take action as provided below:

**(A) Negotiations reopened and the parties agree.** If the parties jointly reopen negotiations and again reach a voluntary agreement, the new proposed agreement ~~shall be~~ is submitted to the civil service commission for final action. The commission (1) may approve, reject, or modify, in whole or in part, the proposed agreement or (2) the commission may, in its sole discretion, again refer the proposed agreement to the parties for further consideration.

**(B) Negotiations reopened and the parties at impasse.** If the parties jointly reopen negotiations and, after bargaining in good faith, ~~do not fail to~~ reach an agreement, either party may request the assistance of the impasse panel as provided in rule ~~6-96-10~~. The deadline for requesting impasse panel assistance ~~shall be~~ is the last day of the response period. Upon receipt of the recommendation of the impasse panel, the civil service commission shall approve, reject, or modify, in whole or in part, the recommendation.

**(C) No new agreement or no impasse.** If the parties (1) do not agree to reopen negotiations or (2) do not request impasse panel assistance, the civil service

commission, at its next meeting, shall approve, reject, or modify, in whole or in part, the original proposed agreement submitted to it for review.

**(b) Prohibited subjects of bargaining.** If the civil service commission proposes to reject or materially modify a provision regarding a prohibited subject of bargaining, the commission, before taking final action to reject or modify the provision, may, in its sole discretion, first refer the agreement to the parties for further consideration as provided in subsection (a). If the commission does not refer the proposed agreement back to the parties, the commission shall reject or modify the provision.

**(c) Not applicable to impasse.** This rule ~~6-13.4~~ is does not apply ~~able~~ to the civil service commission's consideration and action on recommendations by the impasse panel.

## 6-13 UNFAIR LABOR PRACTICES FOR THE EMPLOYER

### 6-13.1 COERCION

It is an unfair labor practice for the employer to interfere with, restrain, coerce, discriminate against, or retaliate against employees in the exercise of rights granted by these rules.

### 6-13.2 INTERFERENCE

It is an unfair labor practice for the employer to dominate, interfere with, or assist in the formation, existence, or administration of ~~any~~ labor organization.

### 6-13.3 DISCRIMINATION

It is an unfair labor practice for the employer to discriminate or retaliate against an employee because that employee has (1) filed ~~any~~ affidavit, petition, or complaint; (2) given ~~any~~ information or testimony; (3) formed, joined, or chosen to be represented by ~~any~~ labor organization; or (4) participated in ~~any~~ campaign or election to certify, change, or decertify an exclusive representative.

### 6-13.4 REFUSAL TO BARGAIN IN GOOD FAITH

It is an unfair labor practice for the employer to refuse to bargain in good faith over mandatory subjects of bargaining as required by these rules.

## 6-14 UNFAIR LABOR PRACTICES FOR EMPLOYEES OR LABOR ORGANIZATIONS

### 6-14.1 COERCION

It is an unfair labor practice for employees or labor organizations to interfere with, restrain, coerce, discriminate against, or retaliate against employees in the exercise of their rights as granted in these rules.

### 6-14.2 INTERFERENCE

It is an unfair labor practice for employees or labor organizations to interfere with, restrain, or coerce the employer with respect to rights protected in this policy or with respect to the orderly selection of a representative to carry out its obligations under these rules.

### 6-14.3 REFUSAL TO BARGAIN IN GOOD FAITH

It is an unfair labor practice for employees or labor organizations to refuse to bargain in good faith with the employer over mandatory subjects of bargaining as required by these rules.

### 6-14.4 STRIKING

It is an unfair labor practice for employees or labor organizations to call, institute, manage, or conduct, or participate in a strike for any purpose.

## 6-15 UNFAIR LABOR PRACTICE PROCEDURES

### ~~6-15.1 COMPLAINTS, FILINGS, DETERMINATIONS~~

An employer, employee, or labor organization may file an unfair labor practice complaint with the state personnel director. The director ~~shall have~~ the authority to investigate, obtain facts, statements, or affidavits, ~~and to make~~ determinations of violations, and assess appropriate penalties.

## 6-16 ADMINISTRATION

### 6-16.1 AUTHORITY OF DIRECTOR

In addition to the powers specifically delegated to the state personnel director in these rules, the director ~~shall have~~ the general authority to request and receive data, hold hearings, resolve jurisdictional disputes, issue orders, including cease and desist orders, and issue other

orders and regulations not inconsistent with the rules. The director may further delegate any of the director's authority, in whole or in part, unless prohibited by these rules.

## 6-16.2 EMERGENCY RULES

The state personnel director may issue emergency rules without action by the civil service commission if the director deems it necessary to preserve peaceful labor relations. An emergency rule is effective when issued by the director and ~~shall~~ remains in effect until the next commission meeting, ~~of the commission~~. The director shall place the emergency rule on the agenda for the next commission meeting, ~~of the commission~~. If a majority of a quorum of the commission ~~fails to~~ does not approve the emergency rule before the adjournment of that meeting, the emergency rule ~~shall~~ expires. Failure of the commission to approve the emergency rule ~~shall~~ does not void actions taken in reliance on the emergency rule action while during the time period ~~the emergency rule was effective~~.

## 6-16.3 APPEALS

A party adversely affected by a decision of the state personnel director under this rule may file an application for leave to appeal to the civil service commission.

## 6-17 STRIKES

### 6-17.1 STRIKING ACTIVITY

A classified employee shall not engage in a strike against the state of Michigan or any of its departments, commissions, agencies, or subdivisions. A labor organization shall not promote, encourage, or support a strike by its members.

### 6-17.2 DISCIPLINE OF EMPLOYEE

~~Any~~ classified employee who participates in a strike may be disciplined by the appointing authority, up to and including dismissal. An employee who engages in a strike ~~shall~~ cannot receive ~~any~~ payment of any kind, including retroactive authorization for use of sick or annual leave, for time lost due to engaging in a strike.

### 6-17.3 EMPLOYEE GRIEVANCE PROCEDURES

**(a) Exclusive procedure.** The grievance procedure authorized in the civil service rules and regulations is the exclusive grievance procedure available to an employee disciplined under this rule ~~6-18 for striking or denied the use of sick or annual leave for lost time, is the grievance procedure authorized in these rules and the regulations issued by the state personnel director~~. A grievance procedure provided in a collective bargaining agreement is ~~shall not be~~ applicable.

1 **(b) Presumption.** ~~Any~~ employee who is absent from work without permission or who  
2 abstains wholly or in part from the full, faithful performance of his or her duties in the  
3 normal manner on the date or dates when a strike occurs, and who did not have advance  
4 approval for leave or produce evidence of illness for each day of absence certified by a  
5 person licensed as a doctor of medicine, osteopathic medicine or surgery, or dental  
6 science or surgery, ~~shall be~~ is presumed to have engaged in such strike on such date or  
7 dates.

8 **(c) Determination.** If it appears that a violation of this rule may have occurred, the  
9 appointing authority or the state employer shall investigate and determine (1) whether ~~or~~  
10 ~~not~~ a violation has occurred, (2) the date or dates of such violation, and (3) the names of  
11 employees participating and the dates of participation.

12 **(d) Penalties; objection.** If an employee is determined to have violated this rule ~~6-18.1~~, the  
13 employee ~~shall~~ must be notified of the determination and any penalty by personal service  
14 or certified mail at the last address filed by the employee with the employer. Any  
15 employee determined to have violated this rule who claims ~~he or she did not to have~~  
16 violated this rule may file a grievance with the appointing authority as in the manner  
17 prescribed in the regulations.

18 **(e) Review of objections; appeal.** The appointing authority shall review the grievance and  
19 may reaffirm or modify the initial determination. If the appointing authority denies the  
20 use of sick leave or annual leave for time lost due to engaging in a strike, the decision  
21 ~~shall be~~ is final and not appealable. If the appointing authority dismisses, suspends, or  
22 demotes the employee for striking, the employee may appeal the grievance decision ~~in the~~  
23 ~~manner as~~ prescribed in the regulations.

#### 24 6-17.4 EMPLOYEE FINES FOR STRIKING

25 In addition to ~~any~~ discipline imposed under this rule ~~6-18.2~~, the state personnel director may  
26 fine ~~each an~~ employee an amount equal to one day of pay for that employee for each full or  
27 partial day the employee engaged in the strike.

28 **(a) Hearing.** If ~~any~~ person alleges that one or more classified employees ~~have~~ engaged in a  
29 strike in violation of these rules, the state personnel director shall conduct a hearing to  
30 determine if there has been a violation and shall issue a decision and order.

31 **(b) Fine.** If the state personnel director determines that one or more classified employees  
32 engaged in a strike, the director shall fine each employee an amount equal to one day of  
33 pay for that employee for each full or partial day the employee engaged in a strike.

34 **(c) Appeal by employee.** The decision of the state personnel director ~~shall be~~ is final unless  
35 an employee aggrieved by a decision files a timely application for leave to appeal to the  
36 civil service commission.

**(d) Payment of fine.** If the state personnel director imposes a fine and the employee continues to be employed by the state, the director shall order the amount of the fine deducted from the employee's salary.

**(e) Additional penalty.** A fine imposed under this rule ~~6-18.4~~ shall be ~~is~~ in addition to all other penalties imposed under any other rule.

**(f) Limitations.** An employer shall not provide an employee any compensation or additional work assignment that is intended to reimburse the employee for a monetary penalty imposed under this rule or that is intended to allow the employee to recover a monetary penalty imposed under this rule-section.

## 6-17.5 ACTION AGAINST LABOR ORGANIZATION

If a labor organization (1) promotes or encourages a strike by one or more of its members through its publications or actions of its officers or agents or (2) financially supports a strike by one or more of its members, the state personnel director shall fine the labor organization \$5,000 for each full or partial day one or more of its members engage in a strike.

**(a) Hearing.** If ~~any~~ person files a complaint accompanied by a sworn affidavit containing particularized facts that, if true, demonstrate that a labor organization has violated this rule, the state personnel director may conduct a hearing to determine if a violation has occurred and shall issue a decision and order. The director may dismiss the complaint without a hearing.

**(b) Fine.** If, after a hearing, the state personnel director determines that a labor organization has violated this rule, the director shall fine the labor organization \$5,000 for each full or partial day one or more classified employee members of the labor organization engaged in the strike.

**(c) Appeal.** The decision of the state personnel director ~~shall be~~ is final unless the labor organization files a timely application for leave to appeal to the civil service commission.

**(d) Failure to pay fine; suspension of payroll deduction.** If the labor organization does not pay a fine imposed under this rule within 28 calendar days after the fine is imposed, the state personnel director shall order that the amount of the unpaid fine be deducted from ~~any~~ monies withheld by payroll deduction that would otherwise be paid to the labor organization.

## ~~6-18.6~~ SCHEDULE A

**Section 1. Purpose.** ~~The purpose of this schedule is to provide temporary procedures for the transition from the old rules governing employee-employer relations to the new rules. In particular, the schedule addresses the fact that some proposed collective bargaining~~

1 agreements have been negotiated while the old rules were in effect, but that the agreements  
2 will be approved and regulated by the new rules.

3 **Section 2. ~~Effect on Approval of New Collective Bargaining Agreements.~~** The  
4 revisions to the civil service rules shall be effective as of December 18, 1998. Every proposed  
5 collective bargaining agreement approved by the civil service commission on or after  
6 December 18, 1998, shall be subject to the rules effective December 18, 1998.

7 **Section 3. ~~Opportunity to Reopen Negotiations.~~** The state employer and some  
8 exclusive representatives have negotiated proposed agreements under the version of the rules  
9 in effect before December 18, 1998. The civil service commission wants the parties to these  
10 proposed agreements to have an opportunity to consider the impact, if any, of these rule  
11 revisions to the proposed agreements. Therefore, the commission authorizes the state  
12 employer and those exclusive representatives who have submitted a proposed collective  
13 bargaining agreement to the commission for review to have an opportunity to jointly agree to  
14 reopen negotiations for the purpose of considering the impact, if any, of these rule revisions  
15 on the proposed agreement.

16 (a) ~~The parties to the proposed agreement may meet and determine if the parties wish to~~  
17 ~~reopen negotiations before the civil service commission takes final action on the proposed~~  
18 ~~agreement.~~

19 (b) ~~If the parties agree to reopen negotiations, the parties shall jointly notify the civil service~~  
20 ~~commission no later than January 14, 1999, that the parties want the commission to with-~~  
21 ~~hold any final action on the proposed agreement until further notice by the parties.~~

22 (c) ~~If the parties do not notify the civil service commission on or before January 14, 1999,~~  
23 ~~the commission shall take final action on the proposed agreement.~~

24 (d) ~~The economic and noneconomic divisions, if any, of the proposed agreement may be~~  
25 ~~separately considered.~~

26 (e) ~~If the parties want the current collective bargaining agreement to be extended until the~~  
27 ~~civil service commission acts on a new proposed agreement, the parties may jointly~~  
28 ~~petition the commission for an extension of the agreement expiring December 31, 1998.~~  
29 ~~Notwithstanding any provision of the current collective bargaining agreement, the~~  
30 ~~extension of any existing agreement shall be governed by and subject to the rules of the~~  
31 ~~commission in effect on the date the commission approves the extension.~~  
32

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33 [End of Chapter 6]  
34





# Chapter 7:

## DISBURSEMENTS FOR PERSONAL SERVICES

### ~~7-1 DISBURSEMENTS FOR PERSONAL SERVICES~~

#### ~~7-1.1 DEFINITIONS~~

~~As used in these rules:~~

**NOTE 12:** The definitions in this rule have been relocated to Chapter 8.

### 7-1 DISBURSEMENTS OF PERSONAL SERVICES

#### 7-1.1 REQUIREMENTS

An appointing authority shall not make or authorize disbursements under a contract for personal services until the provisions of article 11, section 5, of the constitution, these rules, and regulations issued by the state personnel director have been complied with in every particular.

#### 7-1.2 DISAPPROVAL BY STATE PERSONNEL DIRECTOR

If an appointing authority makes or authorizes disbursements for personal services in violation of article 11, section 5, of the constitution or an applicable civil service rule or regulation, the state personnel director may disapprove any further disbursements by written order. If an appointing authority fails or refuses to comply with an order of the director, the director is authorized to take all appropriate action, including filing a civil action, to compel compliance with the disapproval order.

## 7-2 STANDARDS FOR CONTRACTING FOR PERSONAL SERVICES

### 7-2.1 REQUIREMENTS

An appointing authority may make or authorize disbursements for personal services under a contract for personal services only if the personal services meet one or more of the following standards:

- (a) **Standard A.** The personal services are so temporary, intermittent, or irregular in nature that they cannot be provided efficiently through the classified service.
- (b) **Standard B.** The personal services are uncommon to the state classified service because they are so specialized, technical, peculiar, or unique in character that the talent, experience, or expertise required to accomplish the duties and responsibilities cannot be recognized as normal to the state service and cannot be efficiently included in the classification plan.
- (c) **Standard C.** The personal services involve (1) the use of equipment, materials, or facilities not reasonably available to the agency at the time and place required and (2) the estimated cost to the agency in procuring such equipment or materials and establishing the needed positions would be disproportionate to the contract cost.
- (d) **Standard D.** The personal services would be obtained at substantial savings over the life of the contract when compared with having the same personal services performed by the classified work force. The personal services do not meet this standard if, despite the savings over the life of the contract, substantial savings would not likely be realized over the long term. Savings are "substantial" if the contract for personal services results in average annual savings equal to or greater than the minimum required savings computed using the table below:

<b>Col. 1</b>		<b>Col. 2</b>
<b>Average Annual Contract Cost:</b>		<b>Minimum Required Average Annual Savings Must Equal:</b>
<i>From:</i>	<i>To:</i>	
\$1	\$25,000	25 % of avg. annual cost
25,001	50,000	20 % (minimum \$6,250)
50,001	100,000	15 % (minimum \$10,000)
100,001	200,000	12.5 % (minimum \$15,000)
200,001	500,000	10 % (minimum \$25,000)
500,001	1,000,000	Minimum \$50,000
1,000,001	and above	5 % of avg. annual cost

(e) **Standard E.** The personal services are included in a mixed contract that meets each of the following tests:

(1) ~~(A)~~—The mixed contract is predominantly for things other than the performance of personal services.

(2) ~~(B)~~—The personal services included are logically or practically related to the predominant nature of the contract.

## 7-3 DISBURSEMENTS TO SPECIAL PERSONAL SERVICE EMPLOYEES

### 7-3.1 REQUIREMENTS

An appointing authority may make disbursements for personal services to a special personal services employee under the following conditions:

(a) **Standards.** The personal services meet either Standard A or Standard B in rule ~~7-24-6.3~~.

(b) **Procedures.** The disbursements for personal services have been (1) approved under the request procedures in rule ~~7-54-6.6~~ or (2) preauthorized under rule ~~7-74-6.8~~.

## 7-4 DISBURSEMENTS TO INDEPENDENT CONTRACTORS

### 7-4.1 REQUIREMENTS

An appointing authority may make disbursements for personal services to an independent contractor under the following conditions:

(a) **Standards.** The personal services meet one or more of the standards in rule ~~7-24-6.3~~.

(b) **Procedures.** The disbursements for personal services have been (1) approved under the request procedures in ~~7-54-6.6~~, (2) authorized under the decentralized review and approval procedures in rule ~~7-64-6.7~~, or (3) preauthorized under rule ~~7-74-6.8~~.

## 7-5 PROCEDURE: PRIOR WRITTEN APPROVAL BY CIVIL SERVICE STAFF

### 7-5.1 PROCEDURE

An appointing authority may submit a request for approval to the department of civil service. Civil service staff shall (1) receive and evaluate the request, (2) receive and evaluate

information submitted by other interested parties, and (3) issue a written technical decision.  
The staff shall approve the request, with or without conditions, or shall deny the request.

### 7-5.2 EFFECTIVE DATE OF STAFF DECISION.

**(a) One interested party.** If the appointing authority is the only interested party participating in the staff review, the technical decision is effective upon its issuance, unless a later date is specified in the technical decision.

**(b) Two or more interested parties.** If more than one interested party participates in the staff review, the technical decision ~~shall be~~ is effective ~~fourteen (14)~~ calendar days after the date the technical decision is issued, unless a different date is specified in the technical decision. An interested party intending to appeal the technical decision may file a request that the state personnel director stay the effective date of the decision pending appeal. The director may stay the effective date of the technical decision pending a technical appeal if the director determines that (1) it is unlikely that the request meets one or more of the standards for approval and (2) a stay is in the best interest of the classified service.

### 7-5.3 APPEAL OF TECHNICAL DECISION

An interested party who participated at the staff review may file a technical appeal as provided in rule ~~2-192-20B~~. The appeal must be received by the department of civil service and all other interested parties within ~~fourteen (14)~~ calendar days after the date the technical decision is ~~mailed~~ issued.

## 7-6 PROCEDURE: DECENTRALIZED APPROVAL WITHOUT PRIOR CIVIL SERVICE REVIEW

### 7-6.1 DOCUMENT COMPLIANCE

An appointing authority may make or authorize disbursements for personal services if the appointing authority documents its compliance with civil service rules and regulations prior to making any disbursements and the appointing authority gives notice of the contract or disbursements to the department of civil service, to employees, and to exclusive representatives of employees.

### 7-6.2 TRAINING REQUIRED

An appointing authority shall not use the decentralized approval procedure until the department of civil service certifies in writing that the staff of the appointing authority has received adequate training in the required procedures. The department may also require additional periodic training at any later date to ensure continued compliance with the civil service rules and regulations as a condition of the use of the decentralized approval procedure.

### 7-6.3 DOCUMENTATION REQUIRED

The appointing authority shall document each of the following prior to making any disbursements:

- (a) The standard or standards in rule ~~7-24-6.3~~ that the personal services meet.
- (b) Details of the proposed contract that are sufficient to demonstrate clearly how the personal services meet one or more of the standards in rule ~~7-24-6.3~~.
- (c) Any further documentation required in the regulations.
- (d) A copy of each contract executed or effective as a result of this approval.

### 7-6.4 MAINTENANCE OF RECORDS

~~(a)~~ The appointing authority shall maintain the documents required by this rule for a period not less than ~~two~~ 2 years after the end of the contract. The documents ~~shall~~ must be made available to the department of civil service for purposes of auditing compliance.

### 7-6.5 NOTICE

As a condition of the use of the decentralized approval procedure, the appointing authority shall complete a form prescribed by the department of civil service and send a copy of the completed form to the department of civil service at least 14 calendar days before the contract is executed. At the same time, the appointing authority shall also post notice of the proposed contract in a central public location.

### 7-6.6 LIMITATIONS

Notwithstanding any other civil service rule or regulation to the contrary, an appointing authority shall file a request and obtain prior civil service approval as required in rule ~~7-5 4-6.6~~ before making or authorizing disbursements for personal services in any of the following circumstances:

- (a) **Layoff of classified employee.** One or more classified employees will be laid off or demoted as a result of the contract for personal services.
- (b) **Contract amount.** The disbursements for personal services may exceed \$500,000 in ~~any~~ one fiscal year or \$2,000,000 during the life of the contract.
- (c) **Number of contracts.** The appointing authority has or will enter into six ~~(6)~~ or more separate contracts for substantially the same personal services in ~~one a~~ one fiscal year.

### 7-6.7 COMPLAINTS

Any complaint regarding the use of the decentralized review and approval process by an appointing authority may be brought only under the complaint procedures in rule ~~7-94-6.10~~.

## 7-7 PROCEDURE: PREAUTHORIZATION

### 7-7.1 PUBLICATION OF LIST

The department of civil service may establish and publish a list of personal services deemed to meet one or more of the standards of rule ~~7-24-6.3~~ without further review.

### 7-7.2 USE OF PREAUTHORIZED APPROVAL

An appointing authority may make or authorize disbursements for any preauthorized personal services without submitting a request or obtaining prior written approval of the department of civil service.

### 7-7.3 REPORTING

As a condition of using the preauthorized list, the appointing authority shall report all disbursements for preauthorized personal services as required by statute and the civil service regulations.

### 7-7.4 ADDITIONS TO PREAUTHORIZED LIST

An appointing authority seeking to add personal services to the list of preauthorized personal services may file a request under the procedures in rule ~~7-54-6.6~~.

### 7-7.5 COMPLAINTS OR APPEALS

Any complaint regarding the use of the preauthorized approval process or any disbursements for personal services made or authorized under the preauthorized approval process may be brought only under the procedures authorized in rule ~~7-94-6.10~~. Any complaint regarding a technical decision to add personal services to the preauthorized list may be brought only by an interested party under the technical appeal procedures in rule ~~2-192-20B~~.

## 7-8 EMERGENCY DISBURSEMENTS

An appointing authority may authorize or make disbursements for personal services by persons who are not classified employees without prior approval when an emergency occurs. The services ~~shall~~ must not continue beyond ~~fourteen (14)~~ calendar days without approval of the department of civil service. The department may approve continuation of emergency services for an additional period not to exceed ~~twenty-eight (28)~~ calendar days.

## 7-9 COMPLAINTS AND INVESTIGATIONS

### 7-9.1 INVESTIGATION BY STATE PERSONNEL DIRECTOR

Any person may file a written complaint with the state personnel director that a contract for personal services has been awarded by an appointing authority in violation of article 11, section 5, of the constitution or a civil service rule or regulation. The complainant shall also serve a copy of the complaint on the appointing authority and the office of the state employer. If the state personnel director determines that there is a meritorious basis for the complaint, the director shall appoint a person to conduct an inquiry and make a recommendation to the director.

### 7-9.2 VIOLATIONS

If the state personnel director finds any of the following circumstances, the director may disapprove disbursements for personal services or take other appropriate action to ensure compliance with the constitution and the civil service rules and regulations:

- (a) The appointing authority has entered into a contract for personal services without obtaining required civil service approval.
- (b) The appointing authority obtained civil service approval by fraud, material misrepresentation, or failure to disclose material facts.
- (c) The appointing authority made or authorized improper disbursements for personal services under the decentralized review and approval procedure or the list of preauthorized personal services.
- (d) The appointing authority failed or neglected to report a contract or disbursements as required by law, or the civil service rules, or ~~civil service~~ regulations.
- (e) The appointing authority failed to create or maintain adequate records to properly document its compliance with these rules and the regulations.

### 7-9.3 APPEAL OF DIRECTOR'S DETERMINATION

A determination of the state personnel director under this rule ~~shall be~~ is final unless the appointing authority files an application for leave to appeal to the employment relations board within ~~fourteen (14)~~ calendar days after the date of mailing of the director's determination. Thereafter, the appeal procedures of the employment relations board ~~shall~~ control.

## 7-10 AUDIT AND ENFORCEMENT

The department of civil service shall periodically audit an appointing authority to ensure that the appointing authority is complying with civil service rules and regulations governing disbursements for personal services. If the state personnel director determines that an

1 appointing authority has not substantially complied with the rules and regulations, the state  
2 personnel director is authorized (1) to require the appointing authority to file a written request  
3 and to obtain prior written approval from the department of civil service for all disbursements  
4 for personal services and (2) to take such other action as will reasonably ensure that the  
5 appointing authority complies with the rules and regulations in the future.

## 6 7-11 CONTRACT REQUIREMENTS

7 Every contract for personal services ~~shall~~must contain a provision that the state is obligated  
8 to comply with article 11, section 5, of the constitution and applicable civil service rules and  
9 regulations. The provision ~~shall~~must also give notice that, notwithstanding any other  
10 provision of the contract to the contrary, the state personnel director is authorized to  
11 disapprove contractual disbursements for personal services if the state personnel director  
12 determines that the contract violates article 11, section 5, of the constitution or applicable ~~civil~~  
13 ~~service~~ rules and regulations. The failure of an appointing authority to require such a  
14 provision in a contract for personal services ~~shall~~does not limit or restrict the authority of the  
15 civil service commission and the state personnel director to disapprove disbursements for  
16 personal services.

## 17 7-12 LIMITATIONS

18 Nothing in these rules ~~shall~~relieves an appointing authority of obligations under any other  
19 law, rule, or regulation that may apply to a contract for personal services. Approval of the  
20 department of civil service required by these rules only authorizes the appointing authority to  
21 make disbursements for personal services to persons outside the classified service. Approval  
22 of the department of civil service under this rule does not, itself, constitute approval of any  
23 contract or any agreement by the state of Michigan to be bound by the terms of any contract.  
24

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25  
26 *[End of Chapter 7]*  
27



# Chapter 8:

## DEFINITIONS

### 8-1 DEFINITIONS

Unless the context clearly provides otherwise, the following terms in the civil service rules and regulations are defined as follows:

#### 8-1.1 ACTUAL-DUTY TIME

**Actual-duty time** means the time that an employee is scheduled to receive compensation, benefits, or benefit accruals for the performance of the employee's public duties as a member of the classified civil service. Actual-duty time includes all scheduled work time and overtime. Actual-duty time does not include the time an employee is on approved leave from the employee's public duties as a member of the classified civil service, even if the employee receives compensation, benefits, or benefit accruals for the time.

#### 8-1.2 AGENCY OF CONVENIENCE

**Agency of convenience** means a facility within the departments of correction, community health, and military and veterans' affairs in which a separate appointing authority has been designated for the facility.

#### 8-1.3 ALCOHOL TEST

**Alcohol test** means a chemical or breath test administered for the purpose of determining the presence or absence of alcohol in a person's body.

#### 8-1.4 ANYTHING OF VALUE

**Anything of value** means any tangible or intangible item, including, but not limited to, services, entertainment, recreation, travel, food, beverages, event tickets, gifts, loans, ~~or~~ and money.

#### 8-1.5 APPLICANT

**Applicant** means a person who requests to participate in an appraisal process.

### 8-1.6 APPLICANT POOL

***Applicant pool*** means a group of applicants whom the department of civil service has determined to be qualified.

### 8-1.7 APPOINTING AUTHORITY

***Appointing authority*** means each of the following:

- (a) ~~(1)~~ ~~a~~ A single executive heading a principal department;
- (b) ~~(2)~~ ~~t~~ The chief executive officer of ~~each~~ a principal department headed by a board or commission; ~~or~~
- (c) ~~(3)~~ ~~t~~ The person designated by either of the preceding as ~~being~~ responsible for administering the personnel functions of the department, board, ~~or~~ commission, or agency of convenience.

### 8-1.8 APPOINTMENT

***Appointment*** means ~~the~~ an authorized act of an appointing authority employing a properly ~~certified~~ qualified person in a specific position in the classified service; ~~or~~

### 8-1.9 APPOINTMENT DURATION

***Appointment duration*** means the expected length of an appointment. Appointment duration types include (1) indefinite, (2) limited-term, and (3) noncareer.

### 8-1.10 APPRAISAL METHOD

***Appraisal method*** means a technique used to evaluate job-related knowledge, skills, abilities, competencies, and other qualifications to determine eligibility for a position in the classified service.

### 8-1.11 APPROPRIATE UNIT

***Appropriate unit*** means the most appropriate unit, including all employees in broad groupings of related occupational classes exclusively represented and recognized under the terms and conditions provided in these rules.

### 8-1.12 AUTONOMOUS ENTITY

***Autonomous entity*** means an executive branch organization or function established by law within a principal department, but specifically directed by law to be ~~an autonomous entity (i.e.,~~ a separate independent unit), with the intent that its authority, powers, duties, and responsi-

bilities, including personnel, budgeting, procurement, and management-related functions be exercised free from the direction and supervision of the principal department.

### 8-1.13 BASE SALARY

**Base salary** means the fixed, recurring portion of the employee's compensation.

### 8-1.14 BOARD

**Board** means the employment relations board, ~~a neutral body with review powers over grievance, interest, and representation disputes and responsibility for contract impasse resolution and a comprehensive classified compensation plan for employees not exclusively represented.~~

### 8-1.15 BOARDS AND COMMISSIONS

**Boards and commissions** means boards and commissions heading principal departments and created by the constitution, ~~by~~ statute, or ~~by~~ executive order as specified in the constitution.

### 8-1.16 CANDIDATE POOL

**Candidate pool** means qualified persons considered for a position.

### 8-1.17 CAREER APPOINTMENT EMPLOYEE

**Career-~~employee~~ appointment** means an ~~employee whose employment is appointment to a~~ classified position that is expected to last seven hundred twenty (720) hours the equivalent of 90 full-time workdays or more, in accordance with rule 2-16.2. A career appointment may be an indefinite appointment or a limited-term appointment.

### ~~8-1.13~~ CERTIFICATION

**~~Certification~~** means the process whereby (1) the department of civil service or its authorized agent refers the names of qualified candidates to an appointing authority and (2) the department of civil service approves the subsequent appointment of a candidate by the appointing authority.

### 8-1.18 CLASS SERIES

**Class series** means a series of classifications with similar but progressively more responsible job duties.

[HRMN REFERENCE NOTE: *class series* is represented in the HRMN as *job title*.]

## 8-1.19 CLASSIFIED SERVICE

**Classified service** means the Michigan state classified civil service.

## 8-1.20 CLASSIFICATION

**Classification** means a group of positions whose assigned duties and responsibilities are sufficiently alike to warrant assigning the same classification title and requiring the same qualifications.

[HRMN REFERENCE NOTE: *classification* is represented in the HRMN as *core position title*.]

## 8-1.21 CLASSIFICATION LEVEL

**Classification level** means the placement of a classification within a series based on the duties and responsibilities of the position.

[HRMN REFERENCE NOTE: "classification level" is represented in the HRMN by classification and grade number.]

## 8-1.22 COLLECTIVE BARGAINING

**Collective bargaining** means the mutual obligation of an exclusive representative and the employer to meet at reasonable times and to negotiate in good faith concerning mandatory subjects of bargaining and to execute a written agreement, subject to approval of the civil service commission. The obligation to negotiate does not compel either party to agree to a proposal or to make a concession.

## 8-1.23 COMMISSION

**Commission** means the state-Michigan civil service commission.

## 8-1.24 COMPENSATION PLAN

**Compensation plan** means the civil service rules and regulations (including the compilation of pay schedules), procedures, policies, and practices approved by the civil service commission or the state personnel director for administration of pay and fringe benefits for in the classified service.

## 8-1.25 CONFIDENTIAL POSITION

**Confidential position** means a position assigned responsibility for directly assisting a person occupying a managerial position.

## 8-1.26 CONSTITUTION

**Constitution** means the Michigan ~~C~~onstitution of 1963.

## 8-1.27 CONTRACT FOR PERSONAL SERVICES

**Contract for personal services** means a contract between a state agency and a contractor pursuant to which the state agency is obligated to make disbursements from appropriated funds for the personal services of a persons who~~are~~ is not a classified employees of the state.

## 8-1.28 CONTRACTOR

**Contractor** means an independent contractor or special personal services employee individual~~or organization that who~~ enters into a contract for personal services.~~For the purposes of this rule, there are two types of contractors:~~

**NOTE 13:** The definitions of *independent contractor* and *special personal services employee* have been relocated alphabetically in this chapter.

## 8-1.29 CORE POSITION TITLE

**Core position title** is a HRMN term that represents classification.

## 8-1.30 CREDITABLE TIME

**Creditable time** means each of the following ~~times~~:

(a) Time in a career or limited-term appointment~~classified position~~. The following times are counted as creditable time:

- (1) Time in a career appointment position~~position~~ that is interrupted by a layoff or leave of absence.
- (2) Time in a limited-term appointment position~~position~~ that is interrupted by a leave of absence.
- (3) Time in a career or limited-term appointment position~~position~~ that ends as a result of a voluntary, non-disciplinary, non-retirement separation that is immediately followed by appointment to another classified position without a break in service (e.g., resign on Friday and start to work on the next Monday).

(b) Time in a position in the unclassified service if the appointing authority granted a leave of absence for the unclassified appointment. The time is creditable to the classification level from which the leave was granted.

1 | **(c)** Time on a military leave of absence, including temporary and emergency military leave, if  
2 | authorized by civil service rule or regulation or required by federal law.

3 | **(d)** Time for emergencies, transients, and expiration of limited appointments prior to January  
4 | 1977, providing they are not followed by a separation.

5 | **(e)** Time on a paid leave of absence.

#### 6 | 8-1.31 CURRENT EMPLOYMENT PERIOD

7 | **Current employment period** means the period of state employment that ~~began~~ commenced  
8 | with service that is creditable for employment preference purposes and that has not been  
9 | interrupted by a separation or break in service.

#### 10 | 8-1.32 DEMOTION

11 | **Demotion** means a ~~transfer~~ an authorized movement of an employee with status from a  
12 | position in one classification level to a ~~position in another class at a lower classification level~~.

13 | [HRMN REFERENCE NOTE: demotion may be represented in the HRMN as a  
14 | job change.]

#### 15 | 8-1.33 DEPARTMENT

16 | **Department** means the department of civil service.

#### 17 | 8-1.34 DEPARTMENTAL EMPLOYER

18 | **Departmental employer** means the appointing authority responsible for conduct of collective  
19 | bargaining obligations at the departmental level of state government. Such obligations are  
20 | known as secondary negotiations.

#### 21 | 8-1.35 DIRECTOR

22 | **Director** means the state personnel director.

#### 23 | 8-1.36 DRUG

24 | **Drug** means a controlled substance or a controlled substance analogue listed in schedule 1 or  
25 | schedule 2 of part 72 of the Michigan public health code, Act No. 368 of the Public Acts of  
26 | 1978, being sections 333.7201, et seq., of the Michigan Compiled Laws, as may be amended,  
27 | from time to time.

1    8-1.37        DRUG TEST

2    *Drug test* means a chemical test administered ~~for the purpose of~~ to determineing the presence  
3    ~~or absence~~ of a drug or metabolites in a person's bodily fluids.

4    8-1.38        ELIGIBLE POSITION

5    *Eligible position* means any position in the classified service except an excluded position.

6    8-1.39        EMPLOYEE

7    *Employee* means ~~any~~ classified employee of the state of Michigan over which the civil service  
8    commission has jurisdiction ~~pursuant to~~ under the constitution.

9    8-1.40        EMPLOYEE STATUS CODE

10   *Employee status code* means the status assigned to an employee for the purposes of  
11   determining pay and benefits.

12   8-1.41        EMPLOYER

13   *Employer* means each of the following:

14   (a) The appointing authority responsible (1) for exercising the constitutional and statutory  
15   administrative and executive authority of a principal department or autonomous entity  
16   and (2) for implementing the employment relations policy of the governor.

17   (b) In the context of primary collective bargaining negotiations and the administration of  
18   employee fringe benefit programs, the employer is the state employer, acting in  
19   consultation with elected department directors.

20   ~~8-1.34 EMPLOYMENT LIST~~

21   ~~*Employment List* means a list of persons whom the department of civil service has determined~~  
22   ~~to be qualified for appointment to a position in the classified service. A recall list is an~~  
23   ~~employment list.~~

24   8-1.42        EMPLOYMENT PREFERENCE

25   *Employment preference* means a system or process for determining an employee's rights to  
26   retain present classification ~~and level,~~ or to displace another employee, when a reduction in  
27   force occurs.

### 8-1.43 EMPLOYMENT TYPE

***Employment type*** means the work status of the employee. Employment types include, for example, (1) full-time, (2) part-time, (3) intermittent, and (4) seasonal.

[HRMN REFERENCE NOTE: *Employment type* is defined in the HRMN as an *employee status code* that is assigned at the time of appointment.]

### 8-1.44 EXAMINATION

***Examination*** means an appraisal method.

### 8-1.45 EXCLUDED POSITION

***Excluded position*** means ~~all~~ each of the following positions in the classified service:

- (a) A confidential position.
- (b) A managerial position.
- (c) A supervisory position.
- (d) A position in the department of civil service.
- (e) A position in the office of the state employer.

### 8-1.46 EXCLUSIVE REPRESENTATIVE

***Exclusive representative*** means a labor organization ~~that has been~~ granted recognition and certified ~~under rule 6-7~~ as the sole representative of all employees in an appropriate unit.

### 8-1.47 FROZEN

***Frozen*** means a classification or a position that is specifically identified in the regulations or that is no longer part of the official classification plan and to which an appointing authority is prohibited from making an appointment without review and approval of the department of civil service.

### 8-1.48 GRADE

***Grade*** means classification level.

[HRMN REFERENCE NOTE: In the compensation schedules, a “grade” assignment is associated with the salary range assigned to a specific “classification level.”]



1     8-1.49       HIRE

2     *Hire* means the initial appointment to the state classified service authorized by the department  
3     of civil service.

4     8-1.50       HOME AGENCY

5     *Home agency* means the principal department or autonomous agency established pursuant to  
6     under law from which an employee's classified position is moved by executive order to the  
7     authority of a temporary agency.

8     8-1.51       HUMAN RESOURCE MANAGEMENT NETWORK (HRMN)

9     *HRMN* means the integrated network delivering payroll, personnel, and employee benefits  
10    functionality and data exchange among agencies and third parties.

11    8-1.52       INDEFINITE APPOINTMENT

12    *Indefinite appointment* means a career appointment with no fixed ending date at the time of  
13    appointment.

14    8-1.53       INDEPENDENT CONTRACTOR

15    *Independent contractor* means an individual contractor or an employee of a contractor who  
16    provides personal services and who is not an employee of the state of Michigan.

17    8-1.54       INTERESTED PARTY

18    *Interested party* means a party that files a request or a written appearance in the civil service  
19    staff review of a request.

20    8-1.55       JOB CHANGE

21    *Job change* means an authorized movement of an employee from one position to another.  
22    Job change includes, for example, demotion, promotion, reassignment, reclassification,  
23    reduction-in-force, and transfer.

24    8-1.56       JOB TITLE

25    *Job title* is a HRMN term that represents class series.

26    8-1.57       LABOR ORGANIZATION

27    *Labor organization* means an employee organization that has been recognized by the state  
28    personnel director as (1) an exclusive representative of eligible employees or (2) a limited-  
29    recognition organization.

## 8-1.58 LABOR RELATIONS APPEAL

**Labor relations appeal** means an appeal to the civil service commission of a decision of the state personnel director or other staff of the department of civil service.

## 8-1.59 LEAST SENIOR POSITION

**Least senior position** means (1) a vacancy that the appointing authority intends to fill or, (2) lacking any vacancy, the position occupied by the person having with the least total continuous service.

## 8-1.60 LIMITED-RECOGNITION ORGANIZATION

**Limited-recognition organization** means a labor organization ~~that has been recognized by the state personnel director under rule 6-9.3 for the purpose of to representing employees in nonexclusively represented positions.~~

## 8-1.61 LIMITED-TERM APPOINTMENT

**Limited-term appointment** means a career appointment that has a fixed ending date at the time of appointment.

## 8-1.62 LONGEVITY

**Longevity** means a supplemental payment ~~separate pay system that provides for annual payments to eligible employees based upon their total number of years of satisfactory service.~~

## 8-1.63 LUMP SUM AWARD

**Lump sum award** means a portion of an employee's compensation award under a performance-pay program that is (1) in addition to the employee's base salary, (2) ~~is~~ paid in a single payment, and (3) ~~is not~~ rolled into the employee's base salary.

## 8-1.64 MAINTENANCE ALLOWANCE

**Maintenance allowance** means an amount by which an employee is reimbursed for expenses incurred in conjunction with the employee's job, such as meals, lodging, and mileage.

## 8-1.65 MANAGERIAL POSITION

**Managerial position** means any position in the classified service that is assigned responsibility for ~~meets one or more of the following criteria:~~

- (a) ~~A position assigned responsibility for~~ Establishing policy or directing the work of a principal department, an autonomous entity, or one of their subdivisions.

~~(b) A position assigned responsibility (1) for administering the policies and programs of a principal department, an autonomous entity, or one of their subdivisions; or~~

~~(c) Managing, administering, or controlling a local branch office of a principal department or autonomous entity.~~

~~(e)(d) A position assigned responsibility to representing or advising the state in legal matters.~~

~~(d)(e) A position assigned responsibility to adjudicating disputes involving classified employees or mediating labor-management relations in the public or private sector.~~

~~(e)(f) A position assigned responsibility to assisting in the preparation for, or conduct of, primary or secondary negotiations on behalf of the employer.~~

~~(f)(g) A position assigned responsibility in administering personnel administration, labor relations, or the preparation and administration of a budget at the central level of state government or for a principal department or major subdivision.~~

#### 8-1.66 MANDATORY SUBJECTS OF BARGAINING

**Mandatory subjects of bargaining** means subjects of bargaining that are neither prohibited nor permissive subjects of bargaining.

#### 8-1.67 MEET AND CONFER

**Meet and confer** means the mutual obligation of employees or their representatives and the employer to meet at reasonable times and to confer in good faith regarding rates of compensation and other conditions of employment.

#### 8-1.68 MIXED CONTRACT

**Mixed contract** means a contract that authorizes disbursements both for personal services and for things that are not personal services.

#### 8-1.69 MOVED EMPLOYEE

**Moved employee** means any career employee whose classified position has been moved from a home agency to the authority of a temporary agency solely as a result of either (1) the creation of a temporary agency or (2) an executive order pursuant to under article 5, section 2, of the constitution, moving functions or personnel to a temporary agency.

~~8-1.51~~**8-1.70** ~~NONCAREER EMPLOYEE~~**NONCAREER EMPLOYEE APPOINTMENT**

*Noncareer employee appointment* means an ~~employee whose employment period~~  
~~appointment to a classified position that is expected to last less than seven hundred twenty~~  
~~(720) hours the equivalent of 90 workdays in a calendar year. in accordance with rule 2-16.3.~~

**8-1.71 NONCREDITABLE TIME**

*Noncreditable time* means each of the following times:

- (a) Time preceding a separation, dismissal, retirement, or other break in service from state employment, unless expressly defined as creditable time, ~~in subsection (h)(1).~~
- (b) Time on an unpaid leave of absence, including, for example, medical leave or educational leave.
- (c) Time on an unpaid suspension.
- (d) Overtime in excess of eighty (80) hours in a biweekly pay period.
- (e) Time in a noncareer appointment position.
- (f) Military service time that is creditable for retirement only.
- (g) Lost time.
- (h) Time in layoff status.

**8-1.72 NONEXCLUSIVELY REPRESENTED POSITON**

*Nonexclusively represented position* means (1) an excluded position or (2) an eligible position in a unit that has not elected an exclusive representative.

**8-1.73 OFF-DUTY TIME**

*Off-duty time* means all time outside actual-duty time. Off-duty time includes the time an employee is on a leave of absence from the performance of the employee's public duties as a member of the classified ~~state civil~~ service, including, but not limited to, time on annual leave, personal leave, school leave, sick leave, union leave, and lost time.

**8-1.74 PARTY**

*Party* means any of the following persons or organizations:

- (a) An appointing authority that files a request to contract for personal services.
- (b) An exclusive representative of a classified employee ~~who has~~with a direct interest in the technical decision.

- (c) A nonexclusively represented classified employee ~~who has~~with a direct interest in the technical decision.
- (d) A limited recognition organization appearing on behalf of a classified employee with ~~who has~~ a direct interest in the technical decision.
- (e) The office of the state employer.
- (f) Any other person or organization (1) with a demonstrable special interest in ~~the~~a technical decision, (2) who petitions to participate in the civil service staff review, and (3) who is authorized by the department of civil service to participate in the review.

#### 8-1.75 PERFORMANCE-PAY PROGRAM

***Performance-pay program*** means a compensation system in which the state personnel director, on request of an appointing authority, adjusts individual compensation on the basis of individual and group performance evaluations, individual competencies, departmental objectives, departmental budget, and other job-related factors. The primary purpose of a performance-pay program is to recognize, reward, and encourage exceptional individual and group performance.

#### 8-1.76 PERMISSIVE SUBJECTS OF BARGAINING

***Permissive subjects of bargaining*** means subjects of bargaining that are included in the rights reserved to management as a matter of law, including civil service rule 6-~~45~~, unless the management right is a prohibited subject of bargaining.

#### 8-1.77 PERSON DOING BUSINESS WITH THE STATE

~~A~~Person doing business with the state means an individual employed by, or directly or indirectly representing, any of the following businesses or entities:

- (a) A business, entity, or person that has a contract with the state ~~which~~that the classified employee had or has the authority to award or ~~to~~ recommend the award.
- (b) A business, entity, or person that is seeking a contract with the state for which the classified employee, as a part of the employee's official duties, had or has (1) the authority to develop, recommend, or approve the contract specifications or (2) the authority to recommend the purchase or award of the contract.
- (c) A business, entity, or person that is regulated by the agency employing the classified employee and for which the classified employee has any regulatory responsibility.
- (d) A business, entity, or person ~~that has~~with any enforcement matter or contested case pending before an agency and for which the classified employee has any enforcement or adjudicatory responsibility.

(e) A business, entity, or person that performs work for the state which the classified employee inspects or approves.

(f) A business, entity, or person whose financial records are audited by the classified employee.

~~(e) Trade associations, attorneys, and lobbyists included.~~ For the purposes of this rule, ~~persons doing business with the state shall include, but not be limited to, the following persons:~~

~~(f)(g)~~ An employee or representative of a trade association if any member of the association is a business or entity described in subsections (a) through (f). ~~(b)(1) through (b)(6).~~

~~(f)(h)~~ An attorney who represents any business, entity, or person described in subsections (a) through (f). ~~(b)(1) through (b)(6).~~

~~(f)(i)~~ A lobbyist who represents any business, entity, or person described in subsections (a) through (f). ~~(b)(1) through (b)(6).~~

~~(g)(j)~~

## 8-1.78 PERSONAL SERVICES

**Personal services** means work performed for the direct benefit of the state by an individual for compensation.

## 8-1.79 POSITION

**Position** means a classified job identified by its respective duties and responsibilities.

## 8-1.80 PREAUTHORIZED

**Preauthorized** means the specific authorization granted to an appointing authority to make a transaction in accordance with civil service rules and regulations without prior civil service review.

## 8-1.81 PRIMARY NEGOTIATIONS

**Primary negotiations** means collective bargaining negotiations at the central level between the state employer and an exclusive representative.

## 8-1.82 PRINCIPAL DEPARTMENT

**Principal department** means one of not more than ~~twenty (20)~~ executive branch departments provided for by article 5, section 2, of the constitution.

1        [HRMN REFERENCE NOTE: *principal department*” is represented in the  
2        HRMN as *process level*.]

3        **8-1.83        PROCESS LEVEL**

4        ***Process level*** is a HRMN term that represents principal department, autonomous entity, or  
5        agency of convenience.

6        **8-1.84        PROHIBITED PRACTICES**

7        ***Prohibited practices*** means unfair labor practices specified in these civil service rules or the  
8        regulations.

9        **8-1.85        PROHIBITED SUBJECTS OF BARGAINING**

10       ***Prohibited subjects of bargaining*** means civil service authority, policy, rules, regulations,  
11       procedures, and practices governing or regulating any of the following:

- 12       (a) The classification and ~~allocation~~ grade assignment of positions in the classified service.  
13       The rates of compensation for an existing class of positions is a mandatory subject of bar-  
14       gaining, except that civil service retains the sole authority to establish the initial rate of  
15       compensation for a newly-created class of positions ~~at the time when~~ the new class is  
16       included in the official classification plan.
- 17       (b) The determination of the qualifications of candidates for positions in the classified service,  
18       including, but not limited to, ~~examinations~~ appraisal, probation, ~~certification~~, and  
19       appointment.
- 20       (c) Review and approval or disapproval of requests by agencies to make disbursements for  
21       personal services outside the classified service. Notwithstanding this subsection, the  
22       following are proper subjects of bargaining:
- 23           (1) Notice to the exclusive representative of a request for permission by the appointing  
24           authority to make disbursements for personal services outside the classified service.
- 25           (2) The obligations to meet and confer regarding the impact of a decision to make  
26           disbursements for personal services outside the classified service.
- 27           (3) Reasonable efforts on the part of the employer, not involving a delay in  
28           implementation, to reduce the impact on current classified employees of a decision to  
29           make disbursements for personal services outside the classified service.
- 30       (d) Political activity or union activity by classified employees during actual-duty time.
- 31       (e) The authority of the civil service commission, the department of civil service, and the  
32       state personnel director, established by law including the civil service rules and  
33       regulations.

- (f) The system of collective bargaining created in the civil service rules, the bargaining relationships authorized in the rules, and the limitations, restrictions, and obligations on the collective bargaining parties, collective bargaining agreements, and eligible employees established in the civil service rules and the regulations.
- (g) Conditions of employment outside the bargaining unit.
- (h) Compensation related to patents and copyrights.
- (i) The requirements and limitations on union leave in rule 6-34.10(c).
- (j) The requirements and limitations on strikes and strike-related grievances.
- (k) Grievance and appeal rights of classified employees aggrieved by the abolition or creation of a position.

#### 8-1.86 PROMOTION

***Promotion*** means the appointment of an employee to a different position at a higher classification level.

#### 8-1.87 PROPER SUBJECTS OF BARGAINING

***Proper subjects of bargaining*** means rates of compensation and other conditions of employment that are not prohibited subjects of bargaining. Proper subjects of bargaining include both mandatory and permissive subjects of bargaining.

**NOTE 14:** The definitions of *mandatory subjects of bargaining* and *permissive subjects of bargaining* have been relocated alphabetically in this chapter.

#### 8-1.88 RANDOM SELECTION BASIS

***Random selection basis*** means a mechanism for selecting test-designated employees for drug tests and alcohol tests that (1) results in an equal probability that any employee from a group of employees subject to the selection mechanism will be selected and (2) does not give an appointing authority discretion to waive the selection of any employee selected under the mechanism.

#### 8-1.89 REASONABLE SUSPICION

***Reasonable suspicion*** means a belief, drawn from specific objective facts and reasonable inferences drawn from those facts in light of experience, that an employee is using or may have used drugs or alcohol in violation of a departmental work rule or a civil service rule or



regulation. By way of example only, reasonable suspicion may be based upon any of the following:

- (a) Observable phenomena, such as direct observation of drug or alcohol use or the physical symptoms or manifestations of being impaired by, or under the influence of, a drug or alcohol.
- (b) A report of on-duty or sufficiently recent off-duty drug or alcohol use provided by a credible source.
- (c) Evidence that an individual has tampered with a drug ~~test~~ or alcohol test during employment with the ~~S~~state of Michigan.
- (d) Evidence that an employee is involved in the use, possession, sale, solicitation, or transfer of drugs or alcohol while on duty, while on the employer's premises, or while operating the employer's vehicle, machinery, or equipment.

#### 8-1.90 REASSIGNMENT

**Reassignment** means an authorized movement of an employee from one classified position to another at the discretion of an appointing authority. A reassignment ~~takes place outside the certification process and is not an appointment.~~

[HRMN REFERENCE NOTE: *reassignment* is represented in the HRMN as a *job change*.]

#### ~~1-1.868-1.91~~ RECALL LIST

**Recall List** means ~~an employment~~ list of persons who have been laid off, demoted, or otherwise displaced for reasons of administrative efficiency, including, for example, lack of work, lack of adequate funding, change in mission, or reorganization of the work force.

#### 8-1.92 RECLASSIFICATION

**Reclassification** means an authorized classification action to change an employee's classification or grade based on the gradual growth and accretion of higher level duties.

#### ~~1-1.888-1.93~~ RED-CIRCLED-EMPLOYEE PAY TREATMENT

**Red-circled ~~employee pay treatment~~** means fixing the current salary rate of an employee above whose approved rate of pay exceeds the maximum salary rate authorized established in the compensation plan for the employee's classification.

#### 8-1.94 REHABILITATION PROGRAM

**Rehabilitation program** means an established program to identify, assess, treat, and resolve employee drug or alcohol abuse.

#### 8-1.95 REINSTATEMENT

**Reinstatement** means the appointment of a person who was previously separated from, or demoted in, the classified service while in satisfactory standing.

#### 8-1.96 REGULATION

**Regulation** means a formal, general written enactment issued by the state personnel director that: (1) exercises, implements, or applies powers granted in article 11, section 5, of the constitution; (2) exercises, implements, or applies legislative powers granted by rule; or (3) prescribes the procedures or practices of the department of civil service. A regulation does not include the following:

(a) A determination, decision, or order in a contested case, technical appeal, or individual labor relations matter.

(b) A determination, declaratory ruling, order, or other disposition by the state personnel director of a particular matter as applied to a specific set of facts.

(c) A personnel or administrative action by the state personnel director.

(d) A form with instructions, an interpretive statement, an informational pamphlet, or other material that in itself does not have the force and effect of a regulation but is merely explanatory.

(e) An advisory.

#### 8-1.97 REQUEST

**Request** means a request submitted by an appointing authority to the department of civil service under rule ~~7-54-6.6~~, for approval to acquire personal services from a person who is not a classified state employee, or under rule ~~7-74-6.8~~, to add personal services to the preauthorized list.

#### 8-1.98 RULE OF GENERAL APPLICABILITY

**Rule of general applicability** means a civil service rule that applies equally to all similarly situated classified employees and without distinction between eligible positions and nonexclusively represented positions.

1    **8-1.99        SECONDARY NEGOTIATIONS**

2    ***Secondary negotiations*** means (1) collective bargaining negotiations authorized by a primary  
3    agreement to take place at the departmental level between the departmental employer, in  
4    consultation with the state employer, and exclusive representatives or (2) collective bargaining  
5    negotiations of noncompensation issues at the departmental level between departments with  
6    elected directors and the exclusive representatives.

7    ~~1-1.958-1.100~~ **1.100        SELECTIVE-CERTIFICATION POSITION REQUIREMENTS**

8    ***Selective ~~certification-position~~ requirements*** means specific qualifications that are narrower  
9    or more limited than those generally associated with a ~~job classification~~ position and that are  
10   determined to be essential for performance of the duties of a specific position.

11   **8-1.101        SHIFT DIFFERENTIAL**

12   ***Shift differential*** means a supplementary hourly payment made to an employees whose  
13   regularly scheduled shifts falls between certain designated hours.

14   **8-1.102        SPECIAL PERSONAL SERVICES EMPLOYEE**

15   ***Special Personal Services Employee*** means a contractor who is an employee of a state  
16   agency and who is not a classified employee, an exempt employee, or an excepted employee.

17   **8-1.103        STATE EMPLOYER**

18   ***State employer*** means the governor's designated representative for collective bargaining and  
19   for consultation with employees in nonexclusively represented positions.

20   **8-1.104        STATE OFFICE**

21   ***State office*** in rule ~~1-5.1(b)~~ means (1) full-time elective office in the executive or legislative  
22   branch of state government, (2) justice of the state Michigan supreme court, or (3) judge of  
23   the state Michigan court of appeals.

24   **8-1.105        STATUS**

25   ***Status*** means the recognition of an employee who has been properly appraised, qualified, and  
26   appointed to the classified service and who has satisfactorily completed the probationary  
27   period in an indefinite or limited-term appointment.

28   **8-1.106        STATUS CLASSIFICATION**

29   ***Status classification*** means a particular classification in which an employee has obtained or  
30   held ~~career employment~~ status.

## 8-1.107 STRIKE

**Strike** means the concerted failure to report for duty, the willful absence from one's position, the stoppage of work, or the abstinence in whole or in part from the full, faithful, and proper performance of duties of employment, for the purpose of inducing, influencing, or coercing a change in the conditions of employment, compensation, or the rights, privileges, or obligations of employment or for the purpose of protesting or responding to an act alleged or determined to be an unfair labor practice committed by an employer.

## 8-1.108 SUBCLASS

**Subclass** means additional specialized experience, specialized training, licensure, or other specialized qualification that is required for appointment to a specific subgroup of positions within a job classification.

## 8-1.109 SUPERVISORY POSITION

**Supervisory position** means a position in the classified service that meets one or more of the following criteria:

- (a) A position assigned responsibility, in the interest of the employer, to hire, assign, transfer, discipline, lay off, recall, promote, ~~reallocate~~ reclassify, evaluate, or set the pay for another employee.
- (b) A position assigned responsibility to direct an employee or to adjust employee grievances.
- (c) A position assigned responsibility effectively to recommend any action referenced in subsection (a) or (b) if the exercise of such authority requires the use of independent judgment and is not merely a routine or clerical act.

## 8-1.110 TECHNICAL COMPLAINT

**Technical complaint** means a written complaint that a technical decision (1) violates article 11, section 5, of the Michigan constitution, (2) violates a civil service rule or regulation, (3) lacks a rational basis, or (4) ~~was~~ is an abuse of discretion.

## 8-1.111 TECHNICAL COMPLAINANT

**Technical complainant** means any of the following persons when ~~the person is directly~~ affected and aggrieved by ~~the~~ a technical decision:

- (a) An applicant for employment.
- (b) A classified employee.
- (c) An appointing authority.

1 (d) The office of the state employer.

2 (e) Any other person or organization authorized by civil service rule or regulation to file a  
3 technical complaint.

#### 4 8-1.112 TECHNICAL DECISION

5 **Technical decision** means an individual decision by staff of the department of civil service  
6 made under the civil service commission's constitutional power (1) to classify all positions in  
7 the classified service according to their respective duties and responsibilities, (2) to determine  
8 the qualifications and fitness of all candidates for positions in the classified service, or (3) to  
9 approve or disapprove disbursements for personal services.

#### 10 8-1.113 TEMPORARY AGENCY

11 **Temporary agency** means an autonomous commission or agency of the state of Michigan  
12 with a life of not more than ~~two~~ 2 years, ~~which has been created pursuant to~~ under article 5,  
13 section 4, of the constitution.

#### 14 8-1.114 TEST-DESIGNATED EMPLOYEE

15 **Test-designated employee** means a classified employee who occupies a test-designated  
16 position.

#### 17 8-1.115 TEST-DESIGNATED POSITION

18 **Test-designated position** means any of the following:

19 (a) A safety-sensitive position in which the incumbent is required to possess a valid  
20 commercial driver's license or to operate a commercial motor vehicle, an emergency  
21 vehicle, or dangerous equipment or machinery.

22 (b) A position in which the incumbent possesses law enforcement powers or is required or  
23 permitted to carry a firearm while on duty.

24 (c) A position in which the incumbent, on a regular basis, provides direct health care services  
25 to persons in the care or custody of the state or one of its political subdivisions.

26 (d) A position in which the incumbent has regular unsupervised access to and direct contact  
27 with prisoners, probationers, or parolees.

28 (e) A position in which the incumbent has unsupervised access to controlled substances.

29 (f) A position in which the incumbent is responsible for handling or using hazardous or  
30 explosive materials.

***Total continuous service*** means the number of paid hours of creditable time compiled during a current employment period. *Total continuous service* includes *creditable* time but does not include *noncreditable* time.

**Transfer** means the appointment of an employee in the classified service to another position, at a the same or lower classification level equal to or lower than the level at which the employee has status.

***Union activities*** means activities undertaken on behalf of a labor organization, including, but not limited to, preparation for collective bargaining, collective bargaining, contract administration, grievance administration or adjustment, grievance hearings, meetings with the employer, organizational administration, attendance at union meetings, litigation, lobbying, labor relations training, and organizing.

**Union leave** means an absence from the performance of an employee's public duties as a member of the classified civil service to engage in union activities.

*[End of Chapter 8]*

# Chapter 9:

## INDEX TO RULES

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